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Libertarianism

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1. Introduction

Libertarianism[1] is a political philosophy, therefore its field of investigation is the examination of the conditions and constraints necessary for the realization of a just social structure: 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)?[2] As will be seen in detail below, the central political theme 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 prescriptions, 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, Murray Rothbard, David Friedman, Robert Nozick, Walter Block and others[3]. However, thought settings and research traditions, even very distant in time, which represented important theoretical sources for libertarianism cannot be ignored: the Scholastics who had proposed subjectivist theories of value; the English Levellers in the seventeenth century; the classic liberalism of John Locke and of the rights iusnaturalists; the *laissez faire* of the French economists of the eighteenth century, and, in the nineteenth century, of Frédéric Bastiat and Gustave de Molinari; the individualist anarchism of Josiah Warren, Lysander Spooner, Benjamin Tucker, Henry D. Thoreau and Jay Nock; the Austrian School of Economics of Carl Menger, Friedrich von Wieser, Eugen von Bohm-Bawerk, Ludwig von Mises and Friedrich von Hayek[4]; the

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[1] 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. 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 an anti-authoritarian undertone. In the first part of the twentieth century two parallel uses developed. On the one hand, the socialist groups continue to use the term, but with much less rigor or attention to meaning. On another side, and this is what interests us here, classical liberals, especially from the Anglo-Saxon world, resort to it. As the denomination of the doctrine in question, it was first used in 1946 by Leonard Read, American economist and founder of the "Foundation for Economic Education", who defined himself *libertarian*. In fact, in the early decades of the twentieth century, those who referred radically and consistently to classical liberalism had to abandon the English term *liberal*, because proponents of state intervention and egalitarianism had appropriated it, as, for example, in the United States the supporters of the New Deal and in the United Kingdom the advocates of the Welfare State.

[2] 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.

[3] A more detailed list includes Ralph Raico, Morris e Linda Tannehill, John Hospers, Tibor Machan, Roy Childs jr, Hans-Herman Hoppe, Stephan Kinsella, Jan Narveson, Douglas Den Uyl, Douglas Rasmussen, Randy Barnett, Richard Epstein, Wendy McElroy, David Boaz, Lew Rockwell, Thomas Di Lorenzo, Justin Raimondo, David Bergland, Bruce Benson, Gary North, Jesus Huerta de Soto.

[4] In the economic field, the Chicago School was also a source of inspiration; and, in its interactions with political science, also James Buchanan and other scholars in the Virginia School.

American Old Right by H. L. Mencken, Rose Wilder Lane, Isabel Paterson, Frank Chodorov, Garet Garrett and Leonard Read[5].

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', one, which will be followed here[6].

2. Self-ownership

The first concept to be examined is that of *self-ownership*. Self-ownership means that each individual is the absolute owner of himself, that is, of his own body and mind[7]. Individuals are

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[5] Going back to antiquity, traces of a protolibertarian 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.

[6] On the basis of this approach, of which *austrolibertarianism* or *austro-anarchist* libertarianism today is a large part, actions possess intrinsic qualities that make them the subject of rights – life, liberty and property (and corresponding duties), which are therefore the starting point of the theoretical-political elaboration; unlike 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. According to some formulations, the rights of deontological derivation are "asserted *a priori*": this synthetic description can be accepted if it is clear that it does not mean that they are posed 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 or kantism. These settings will be mentioned in the paragraph on self-ownership (see *infra*, § 2). To be more precise, rights are the translation of an ethical instance into a legal constraint. The austrolibertarian current, unlike the relativistic or anticognitivistic or postmodern approaches, is characterized by a remarkable theoretical resolve, inspired by a strong foundationism. *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. Against the provisional and reversible historical-linguistic knowledge, the plausibility of the definitive acquisitions is asserted. Utilitarian libertarians, on the other hand, support liberty-property because it determines overall well-being (utility) or happiness in society. Authors who defend this perspective, such as R.W. Bradford, D. Friedman, D.R. Steele, L. Yeager, C. Murray, J. Kelley and J.A. Miron, enhance its ability to provide more useful dialectic tools to convince public opinion or in disputes with non-libertarians. Cfr. D. Friedman, *The Machinery of Freedom*, Harper and Row, New York, 1973; R.W. Bradford, *The Rise of the New Libertarianism*, in "Liberty magazine", vol. 13, n. 3, March 1999; R.W. Bradford, C. Murray, D. Friedman, D. Boaz, *Freedom: What's Right vs. What Works*, in "Liberty Magazine", vol. 19, no. 1, January 2005, pp. 31–39. In the *Appendix* at this essay there is a scheme that lists the different approaches to libertarian theory, with the relative authors.

[7] 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", 12, 2003, pp. 50-57. This concept, 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* 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). F. de Vitoria, exponent of the School of Salamanca, affirmed that «every man is a person and is master of his body and properties» (*Relectio de Indis* [*The Question of the Indios*], 1539). 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

sovereign of themselves. This implies that everyone must be able to decide freely, without external interference, what to do with himself and his life; that is, controlling one's body without coercive intromission. People's lives and bodies cannot be used by others, including the government, for their own purposes[8].

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[9]. The ontology of the "self" assumed by libertarianism derives from the metaphysical theory of personal identity based on separateness[10], which is therefore an epistemic, as well as a normative, assumption[11]. As we will see later, a person can lose rights on his/her body only for having committed an aggression.

Different arguments were used to demonstrate self-ownership.

a) Iusnaturalistic approach: 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, choose ends and means[12]. Paralyzing this process through compulsion goes against what is necessary for man's nature, his life and well-being. The right to

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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'». This statement, before being normative, is factual. 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. J.G. Hulsmann, *The A Priori Foundations of Property Economics*, in "The Quarterly Journal of Austrian Economics", 7, no. 4, Winter 2004, pp. 41-68.

[8] 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).

[9] *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", 123 (1), 2012, pp. 32-60. Provided that, in relation to nuisances, self-ownership protects only from harmful ones (see *infra*), 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.

[10] From a philosophical point of view, the *individual* of libertarianism and liberalism differs from the *person* of Christianity and Greek philosophy. The person is placed in a relational system that produces political and legal outcomes with a holistic imprint, while the 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.

[11] E. Feser, *Personal Identity and Self-Ownership*, Cambridge University Press, Cambridge, UK, 2005. In such a context, free will is presupposed. 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.

[12] 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.

belong to himself gives everyone the right to carry out these vital activities without being hindered by others[13].

b) Logical and/or operational implausibility of alternatives (*reductio ad absurdum* argument). Self-ownership is demonstrated *ex negativo*, illustrating the absurdity of the consequences deriving from its denial. 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 structure. 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.

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[14].

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[13] 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.

[14] M. N. Rothbard, *For a New Liberty: The Libertarian Manifesto*, Macmillan, New York, 1973, pp. 28-29; *The Ethics of Liberty*, Humanities Press, Atlantic Highlands, NJ, 1982. 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 http://web.archive.org/web/20071014120247/rightreason.ektopos.com/archives/2006/04/rothbard_as_a_p.html, 2006. A detailed response to Freser's criticisms is contained in G. Casey, *Feser on Rothbard as a Philosopher*, in "Libertarian

c) Each person has an intimate and indissoluble connection with that "scarce" resource that is his own body: he has direct control of it; and therefore, has a claim on it higher than that of any other. 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. 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[15]. Another example: we naturally use possessive expressions, such as "your body", "my body" and so on; in doing this we are instinctively assigning property titles, and clearly distinguishing the individual owners.

d) Certain practices judged unanimously unjust and unacceptable, such as slavery or the obligation to provide a healthy eyeball to the blind, are such only insofar as self-ownership is implicitly assumed.

e) Some rights make sense only if self-ownership is assumed: if the mind of an individual is not his, freedom of thought has no meaning, if the tongue is not his, freedom of speech has no meaning.

f) Epistemic argument (or consequentialist in a broad sense): each one knows better than the others (in particular of the rulers) their preferences and circumstances of life, is in a better position

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Papers", 1, 34, 2009. 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.

[15] There is a disagreement among libertarians about the alienation of themselves, and therefore about voluntary slavery, although the opposite position prevails (M.N. Rothbard, S. Kinsella, R. Barnett, D. Gordon, R. Epstein). 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*, § 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 (S. Kinsella, *Inalienability and Punishment: A Reply to George Smith*, in "Journal of Libertarian Studies" vol. 14, no. 1, winter 1998, pp. 79-93). Rothbard's position, according to which every individual always controls his own will, and cannot fail to do so, is similar to this; therefore, it cannot alienate it. Even if I obey another person, the decision to do so remains mine; and the possible threat of violence does not change things, because I'm always the one who has to decide whether to bow to the threat. According to Rothbard, the fact that every person cannot alienate his will reinforces self-ownership (M.N. Rothbard, *The Ethics of Liberty*, pp. 60-61). Libertarians in favor of the thesis of the possibility, and lawfulness, of the voluntary slavery contract (W. Block, R. Nozick, J.C. Lester) argue that if you own something, you can sell it; and one's body is not excluded from negotiating objects. They contest the argument used in point c), as it would confuse physical individuality with property: 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». 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, n. 2, 2003, p. 81. 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. 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, p. 66.

to make the decisions that affect their own person; therefore, it is appropriate that everyone has control over himself (rights over himself)[16].

g) Consequentialist argument in the strict sense: societies in which individuals are self-owners, Kantianly ends in themselves and not means, are prosperous and with a degree of well-being clearly superior to societies that reject this principle[17].

h) "A priori of argumentation": 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[18].

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[16] A follower of this approach is Richard Epstein, who defines *autonomy* as such a condition. Similar is the 'principle of epistemic advantage' proposed by Jamie C. Watson, according to which everyone is in a position where he *knows* (has more information about) his own interests (understood broadly, such as desires, material or spiritual) better than the others 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. J. C. Watson, *Prolegomena to an Epistemic Case for Classical Liberalism*, in "Libertarian Papers", 6, 1, 2014, pp. 21-56, http://libertarianpapers.org/wp-content/uploads/articles/2014/lp-6-1-2.pdf.

[17] This is the position advocated by Jason Brennan, Bas van der Vossen and David Schmidtz: «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*.

[18] H.-H. Hoppe, *The Economics and Ethics of Private Property: Studies in Political Economy and Philosophy*, Mises Institute, Auburn, AL, 2006. Hoppe borrowed the principle from Habermas and Apel, (K.O. Apel, *L'Apriori della comunità della comunicazione e i fondamenti dell'etica*, in *Comunità e comunicazione*, Rosenberg & Sellier, Torino, 1973). Libertarian authors who follow a similar approach are Stephen N. Kinsella, 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" 11, Spring 1986) and Jorg Guido Hulsmann (*The A Priori Foundations of Property Economics*). Kinsella has developed the *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. 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.N. Kinsella, *Estoppel: A New Justification for Individual Rights*, in "Reason Papers" 17, Fall 1992; *New Rationalist Directions in Libertarian Rights Theory*, in "Journal of Libertarian Studies" 12, n. 2, Fall 1996.

3. Property on tangible things

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

Since resources are scarce (limited), i.e., 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[19]. The criterion for the assignment of property rights is the Lockean *homesteading*[20]. The first one who took the action of occupying[21] a *res nullius* resource[22] is the owner of it and the goods he has produced with it.

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[19] If human beings could obtain all the goods they desire with a simple snap of their fingers - that is, if resources were not scarce - there would be no conflicts, and therefore the problem of identifying a criterion for assigning property would not arise. 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. Hoppe pointed out that, even in a "garden of Eden" condition, that is, of total absence of scarcity, the bodies of individuals would continue to be scarce, because if an individual makes a choice he cannot simultaneously make another: if I want to eat an apple and another person wants me to lift a chair for him, a conflict arises, and therefore it is still necessary to establish who has the right of ownership over my body. H.-H. Hoppe, *A Theory of Socialism and Capitalism*: *Economics, Politics, and Ethics*, Kluwer Academic Publishers, Boston, MA, 1989. 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/, 20-4-2014. 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, 7, 1964, pp. 11-26; *Toward a Theory of Property Rights*, in "American Economic Review", 1967.

[20] 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.

[21] 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.

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*)[23].

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[22] 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 (the implications of this thesis are illustrated in the next note). G. Casey argues the greater plausibility of the first condition 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». G. Casey, *Murray Rothbard*, Continuum, New York, 2010, p. 56.

[23] Those who believe that the original acquisition should have restrictions, that is, that external resources without ownership should be divided equally among all members of society as common, are called *left-libertarians*. Exponents of this current like Hillel Steiner, Philippe Van Parijs, Michael Otsuka, and Peter Vallentyne, therefore recognize the property of themselves but not the individual property of nature. They, as well as the liberals (C. Brettschneider, M. Murray, W. Kymlicka, R. Arneson) and some analytical Marxists (G.A. Cohen), support their position by mentioning the John Locke's Proviso, which, in its complete version, is as follows: there are two limits to appropriation: 1) each can acquire only what he is able to produce with his work and what he is able to use/consume (so that there is no deterioration and waste of unused goods; for example a person detaches some fruits from the trees and then leaves them to rot; he is violating the share of others' ownership as common property); and 2) others must remain a sufficient amount of goods. In Steiner's version, everyone has the right that the others do not appropriate more than an equal share of external resources; in that of Otsuka and Vallentyne, on the other hand, each has the right that the others do not appropriate a higher share than what is compatible with the equality of opportunities for well-being. Furthermore, the privatization of each section of territory following the first-use-first-own principle could leave some individuals without the means of subsistence and therefore doomed to death. Given the *status quo* represented by possessions of natural resources very different between individual and individual, the aforementioned principle of justice in practice must translate into a repeated transfer of income from owners to those who do not have access to resources (in essence the equivalent of a rent, or of a tax). These limitations do not apply only to the initial acquisition, but also to the bequest: because dead persons are incapable to exercise powers, so they no longer have rights to their estates, which therefore become *res nullius*; and/or because over time natural resources are consumed and the population increases, consequently each newborn has a lower share of natural resources and must be rewarded); therefore bequest would be significantly restricted. The philosopher G.A. Cohen, of Marxist orientation, 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 joint ownership of the external world. Referring to Locke's claim in the *Second Treatise of Government* that God gave the land to men "in common", Cohen argues that if the initial position is joint ownership property, and not the absence of ownership, any individual has a right of veto over the appropriation attempted by any other (or the right to negotiate to be rewarded). Assuming that the world is inhabited by only two people, Able and Infirm, the latter could use his co-ownership on the resources allowing Able to undertake any productive activity as long as it produces a share for him too. This procedure would represent the basis of legitimacy of income redistribution policies. Cfr. G.A. Cohen, *Self-Ownership, World-Ownership, and Equality*, in F. Lucash (ed), *Justice and Equality, Here and Now*, Cornell University Press, Ithaca, N.Y., 1986. A similar position is expressed by the liberal Alan Haworth: in a developed economy such as the contemporary one, different from the initial appropriation in the state of nature, a third party, following a bilateral exchange, could be in a "worse condition" than before (which Haworth also means as a

Many libertarian authors (M. Rothbard, W. Block)[24], for the purposes of the origin of property rights, referred to 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 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[25].

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reduction of opportunities), and therefore its consent should be awaited (expressed for example through democratic procedures). A. Haworth, *Anti-Libertarianism. Markets, Philosophy and Myth*, Routledge, London, 1994.
Libertarians contest these theses on the basis of two arguments. First of all they do not accept the Lockean Proviso, on the basis of different arguments: 1) it would prevent any private ownership of the land, because it can always be said that the reduction of the 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 us from accurately measuring 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 in which it finds itself at a given moment in history (R. Pilon). Second, 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". In fact, Locke later states: «If such a consent as that [of all humanity] was necessary, man had starved, notwithstanding the plenty God had given him». Randal G. Holcombe believes that the expression "common to all men" should be understood as meaning that, in the state of nature, resources are "available" to anyone, not "property" of everyone. R.G. Holcombe, *Common Property in Anarcho-Capitalism*, in "Journal of Libertarian Studies", vol. 19, n. 2, spring 2005. For Gerard Casey, mere existence, without any action, cannot give the right to (joint) ownership of natural resources. To demonstrate this he observes that, if the first humans who populated only the eastern part of Africa also owned Alaska or Siberia, of which they were unaware, then they also collectively owned Pluto or any uninhabited planet of any galaxy, of which they were likewise unaware; and the same is true today for all the inhabitants of the Earth. G. Casey, *Libertarian Anarchy*, Continuum, New York, 2012, p. 68. Libertarians therefore reiterate that the initial condition of the external world is not common property but the absence of property. The most convincing critique of Cohen's theses is contained in Tom G. Palmer's essay, *G. A. Cohen on Self-Ownership, Property, and Equality*, in "Critical Review", vol. 12, no. 3, spring 1998. Similar positions are expressed by An Feallsanach and Richard A. Epstein. Regarding the risk that a newcomer could be left without the means of subsistence 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, n. 1, 1990, pp. 15-16.

[24] M.N. Rothbard, *The Ethics of Liberty*; W. Block, *Homesteading, Ad Coelum, Owning Views and Forestalling*, in "The Social Sciences", vol. 3, n. 2, 2008, pp. 96–103.

[25] 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

Subsequently some authors (R. Epstein, S. Kinsella, T. Palmer)[26] 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 activity[27]. The only relevant "labor" is the one necessary for the completion of the occupancy act, 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.

Therefore, for the acquisition of ownership, there is no need to resort to labor (and possession of labor) and the subsequent creation activity. 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". The original occupation action of the tree is enough. 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 the specific property right.

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[28], one can only appropriate the part on which he has intervened with his/her work; moreover, it is not necessary to work it continuously, it is sufficient that it has been used at least once[29]. The extension of the area which is legitimately appropriate is the *technological unit*

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which you have become the owner. 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.

[26] S. Kinsella, *Against Intellectual Property*, in "Journal of Libertarian Studies", vol. 15, n. 2, Spring 2001; republished from Mises Institute, Auburn, AL, 2008; R. Epstein, *Possession as the Root of Title*, in "Georgia Law Review", vol. 13, 1979, pp. 1221–1243; T.G. Palmer, *Are Patents and Copyrights Morally Justified? The Philosophy of Property Rights and Ideal Objects*, in "Harvard Journal of Law & Public Policy", 13, n. 3, 1990, pp. 817-886.

[27] 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 is at the basis of the refusal of the existence of intellectual property rights: in fact, if *creation* is not the source of property rights, then one does not have the right to the ownership of non-scarce objects such as ideas, created by the mind, because their diffusion does not deprive the owner of possession of them.

[28] 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. 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.

[29] 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 that

and 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[30]. 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[31]. 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[32].

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[33].

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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, pp. 414.

[30] Or, according to the previous Lockean-inspired theory, no labor was mixed.

[31] 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.

[32] 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). W. Block, W. Barnett, *Continuums*, in "Ethics and Politics*",* 10, n. 1, 2008, pp. 151-166. 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 the non-appropriability in the form that precludes others from accessing or granting a right of access (provisos 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). W. Block, *Van Dun on Freedom and Property: A Critique*, in "Libertarian Papers", vol. 2, n. 4, 2010; *The Privatization of Roads & Highways*, Mises Institute, Auburn, AL, 2009; *Forestalling, Positive Obligations and the Lockean and Blockian Provisos: Rejoinder to Stephan Kinsella*, in "Ekonomia–Wroclaw Economic Review", vol. 22, n. 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.

[33] 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 legitimacy of ownership over external objects can be further demonstrated with the same *reductio ad absurdum* used to demonstrate self-ownership, which will not be repeated here.

The right of ownership implies the absolute power to dispose of the property at will, namely to: possess it (control it)[34], use it, perceive its fruits, transform it, sell it, barter it, give it, lend it, rent it, bequeath it, raffle off it, abandon it, destroy it[35]. Ownership is therefore a *title to perform actions.*

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[36].

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[37].

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.

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*[38].

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[34] *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.

[35] 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. 54-56.

[36] Therefore, collective ownership, a circumstance in which the property belongs to several people (for example, a building jointly owned by three individuals) continues to remain a form 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.

[37] 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.

[38] 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.

As regards goods, all (and only) property titles constituted with homesteading, exchange or following a gift received from legitimate owners are therefore lawful[39].

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; then it follows that the legal structure of any society must be centered on the following principle: it must be illegal to initiate violence against an individual or his goods without his consent. Non-aggression principle[40] can be stated as follows: "it is illegitimate to undertake aggressions against non-aggressors". In other words, no one can use physical force *first* against another man or his possessions[41].

The use of 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)[42,43].

"Aggression" is to be understood as the use or threat[44] of physical violence against a person or property of others[45]. Aggression is therefore synonymous with (physical) invasion[46].

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[39] Utilitarian libertarians legitimize private property with the 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.

[40] 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, self-ownership, 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.

[41] The first, and most authoritative, formulations of the principle are those of Ayn Rand and Murray Rothbard. In *The Textbook of Americanism* (1946), Rand writes that "no man has the right to initiate the use of physical force against another man". Rothbard's statement is similar: "no man or group of men can aggress another man's person or property". An old American adage illustrates with good approximation the libertarian principle: "Your freedom to swing your arm stops where my nose begins".

[42] Although of lesser importance, another particular case of legitimate use of force is the use of means of correction by parents against their children or in general the execution of actions expressing parental authority. This is the only case in which both a previous act of violence and consent may be missing for the passive subject of the forced act, for example a child.

[43] In a stateless social system, if an attack occurs, no third party not involved is obliged to intervene to defend the rights of the assailed, neither during the attack nor subsequently to do justice (capture and sanction). Each individual has the responsibility to safeguard their rights, either personally or by contacting a protection agency; however, by employing its own resources. If he does not do it, worse for him, his right possibly violated will remain undermined, 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 affected right. The rights are universal, but their enforcement is the responsibility of each owner. By extension, there is no moral obligation for one State to intervene alongside another State which is attacked. In un sistema sociale senza Stato, se si verifica un'aggressione, nessun terzo non coinvolto ha l'obbligo di intervenire per difendere i diritti dell'aggredito, né nel corso dell'aggressione né successivamente per fare giustizia (cattura e sanzione). 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.

[44] 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!".

Aggressive acts can ultimately be reduced to two main types: aggression against the body and property of others.

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, injuries, beatings, 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[47] or enslavement; or in general it is coercively deprived of the freedom of self-determination; or in an *assault*, when a state of apprehension is induced in the victim, but it is not (yet) concretely affected in the body (e.g. going towards her with a gun)[48].

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[49].

Aggression to things in turn can take three ways: the subtraction (theft, robbery, extortion, fraud[50]) for movable property (including money), trespass to land for real estate[51] and damage (for

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[45] 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. 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 R. Nozick's terminology, the prohibition of aggression is a *side constraint* to be respected, not a goal to be promoted.

[46] Among libertarians, the term "coercion" is sometimes used as a synonym for "aggression" (probably due to the influence of Ayn Rand). However, this use is not correct: "aggression" means using force first, therefore illegitimately, while "coercion", that is, compelling someone to do something, is a way of using force, and it can be right, for example if applied in response to an attack by others. "Coercion" (like "force" or "violence") is a neutral term, "aggression" has the negative connotation implied by the violation of a right.

[47] Which Rothbard defined "fixed term slavery".

[48] 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.

[49] On the entire issue relating to the criteria for assessing the existence of an aggression and the limits of self-defense, see *infra*, § 7 and M.N. Rothbard, *Law, Property Rights, and Air Pollution*, in "Cato Journal" 2, no. 1, Spring 1982, pp. 55-99.

[50] 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" 104, July 1994, pp. 722-738; T.I. Emerson, *The System of Freedom of Expression*, Random House, New York, 1970. Some libertarians reply to this objection 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

both). As regards real estate, a further classification of the types of invasion must be carried out: trespass, which is the invasion by a tangible object, and the nuisance, which is the invasion by intangible substances (radio waves, acoustic waves, particles, fumes etc.) [52].

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 victim[53] (and, for some authors,

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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 to 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, digital ed.

[51] 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.

[52] Nuisances in turn can be divided into visible (perceptible by human senses, e.g. excessive noise, unpleasant odors, fumes) or invisible (e.g. radio waves, low-intensity radiation). While property infringement and visible nuisance are always illegitimate because they interfere with the use and enjoyment of the property by the owner, invisible nuisance is not always, but only if it causes harm, to be proven beyond any reasonable doubt. 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. So, until it is proven that radio waves are harmful, the owner of a land will not be able to interfere with the radio waves that pass through it, which belong to who transmits them, that is, to those who first transmitted a wave in the ether to a given frequency of X kilohertz.

In the case of pollution caused by cars, the practical difficulty of identifying the person responsible and demanding compensation, in a libertarian society is resolved by the fact that, 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.

[53] 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

the *intent*[54]), excluding *potential*[55] and *indirect* effects. This circumstance qualifies strict liability[56]. 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[57]. Libertarians reject any

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infra, § 7). If there is no certainty about the development of the facts, nothing 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.

[54] 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, n. 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 interrupts 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, n. 4, Winter 2004, pp. 97-112.

[55] For example, if you are drunk you could cause a fight, or a car accident; therefore the consumption of alcohol is *tout court* forbidden. Libertarians reply that these are hypothetical damages, 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. Since the prohibitions cannot be imposed on a case-by-case basis, but are introduced in a generalized manner, the final result is the violation of a certain good, freedom, in the name of an abstract precautionary principle. The law, it is the conclusion, cannot do sociology, it must deal with the direct connections between facts.

[56] 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.

[57] 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; and therefore, the correlation cannot be used as legal proof for someone's guilt. In general,

form of indirect liability, such as that of the employer for damages caused to third party by the employee in the course of his/her work. Likewise, actions that may cause indirect damage, that is, a simple loss of 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 contract or to marry a person, should not be considered illicit[58].

The "aggression", and the consequent non-freedom, of libertarians is also very distant from the "domination", and the non-freedom, of neo-republicanism, 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). 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: *volenti non fit injuria*, consequently if the person who suffers violence is willing, as happens, for example, in a boxing match or in a duel[59], the violent act must not be prohibited: in fact, it does not represent an *aggression* in the sense outlined above.

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.

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[60].

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, impersonal and self-inflicted causes do not represent compressions of freedom/property. Natural obstacles should not be considered limitations of freedom but lack of *power*. 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

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statistical or probabilistic correlations cannot be used as evidence that a given action is aggressive. Correlation is not causation.

[58] 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: cfr. *Coercion and Distribution in a Supposedly Non-Coercive State*, in "Political Science Quarterly", 1923. 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*, Institute for Human Studies, Menlo Park, CA, 1970, p. 281). Denying this means introducing a 'right' on the property of the employer for the worker.

[59] Other examples of legitimate "intrusions", because required by the passive subject, are the operations of a surgeon or dentist, or the physical suffering desired by the masochist. Another series of acts that cause pain considered morally and legally legitimate, even if in this case the consent of the passive subject is lacking, is constituted by the means of correction.

[60] «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", 3, n. 1, 2017, p. 5.

human beings. In addition, the constraints must be *external*, not *internal*, to the person: character (including irrational desires or false beliefs[61]) and physical elements (diseases, substance addictions, poverty, etc.), 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 law (excluding here the rules arising from specific contractual agreements) must be to protect the individual, and his property, from the violence of others[62]. 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)[63]. The only "positive" rights (obligation for others to take an action in favor of the holder) allowed are those that arise from contracts; therefore, they are

[61] According to the conception of freedom as *self-realization/self-perfectment*, supported by communitarianists like C. Taylor, 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. This notion of liberty is distinguished from liberty as *capacity*, although both belong to the conception of "positive" liberty: for the second, in fact, it is sufficient to provide the means, while for the first the judgment on the goals is decisive. Sometimes the two notions of liberty are welded together, as happens in M. Nussbaum. In any case, the outcome of the two conceptions is almost always the same, a consistent redistribution of resources.

[62] 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, and the use of force against aggressors is, realistically, a tool that even a libertarian society can hardly give up. «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. 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, n. 30 (212), January 2, 1891, p. 2.

[63] 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*, Temple University Press, Philadelphia, PA, 1988, pp. 18, 80, 81, 82.

voluntary obligations, or from compensation[64]; and they are *special* rights; *general* rights are only negative.

5. Licit actions

From the fact that all actions are allowed except for blatant acts of aggression, it follows that the legal rules must *not*: 1) prohibit individuals from actions that "harm" themselves[65] or impose their behavior "in their own interest"[66], 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[67], perfectionist[68] and redistributive[69] - are therefore

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[64] 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. 196-198.

[65] 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 Lysander Spooner's words: «vices are not crimes».

[66] Such as the consumption, or greater consumption, of the so-called *merit goods*.

[67] *Legal paternalism* 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 - that is, to avoid causing physical, mental or economic damage to himself. 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 or far-sighted. Holistic utilitarianism (the individual, having community ties, cannot harm himself otherwise he damages others, reducing collective well-being) and theological approach (God gives life and takes it away, and nobody can dispose of something that doesn't belong to him) adhere to paternalism. For libertarians, on the other hand, freedom also includes the freedom to make mistakes. It is true, they reply, that individuals are not perfectly rational and wise subjects, 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. The condition of freedom is a prerequisite for the "best interests" to be achieved. Correcting mistakes left to individuals and persuasion is a more efficient way than constraint. Secondly, the indiscriminate ban penalizes moderate consumers (of tobacco, alcohol, soda, slot machines), who are the majority. 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? If man's freedom to establish his consumption is abolished, all freedoms are taken away. 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. J. Hospers, *Libertarianism and Legal Paternalism*, in "Journal of Libertarian Studies", vol. 4, n. 3, summer 1980, pp. 255-265. David Gordon replies to him in the same issue of the magazine, reaffirming the standard libertarian position of non-interference: *Comment on Hospers*, pp. 267-272. 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. S. Conly, *Paternalism and the Limits of Liberty*, in J. Brennan, B. van der Vossen, D. Schmidtz (eds.), *The Routledge Handbook of Libertarianism*, pp. 427-434; *Against Autonomy: Justifying Coercive Paternalism*,

Cambridge University Press, Cambridge, 2012. 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, through light and targeted interventions, can correct the error, the individual improves his well-being. "Paternalism" because the intervention is aimed at highlighting and suggesting the best choice, "libertarian" because the individual would have freedom of choice. 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. 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. R.H. Thaler, C.R. Sustein, *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. David Gordon replied that the Epistemic Argument does not claim that individuals do not make errors of assessment, but that they can decide for themselves better than the rulers. 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: 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. Finally, Sunstein incurs the utilitarian distortion of considering preference for freedom of choice as a component of well-being; well-being as the goal of morality prevents him from understanding the respect for people's autonomy. D. Gordon, *Cass Sunstein's Phony Paternalism*, in "The Austrian", vol. 1, no. 4, July-August 2015.

[68] According to the moral theory called *perfectionism* (or even *legal moralism*), 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 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) also through legal coercion, on the basis of feared disintegrations or corruption of society (*disintegration thesis*; 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). Perfectionism tends to appeal to two argumentative strategies: values are either asserted as objective ethical truth (John Finnis' *new natural law*) or interpreted as simple shared morality (this is the case of exponents of communitarian thought such as A. Etzioni, A. MacIntyre, M. Sandel and M. Walzer, for whom the core of shared values is to be understood as the prevailing opinion in a given historical moment). 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. On this issue, the controversy that occurred in the 1960s in England between the jurist Herbert Hart and Lord 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, 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. H.L.A. Hart, *Positivism and the Separation of Law and Morals*, in "Harvard Law Review", 1958, pp. 593 sgg.; P. Devlin, *The Enforcement of Morals*, Oxford University Press, London, 1965. The idea (expressed for example by M. Walzer, M. Sandel 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 Jonh Locke, who rejected Christianity, did not take revelation seriously and valued the hedonistic and utilitarian aspects. Libertarians reject this interpretation of Locke's philosophy. In general, the accusation of "selfishness" that is sometimes aimed at libertarians is completely wrong. As we have already seen, libertarianism is not a complete moral theory: a libertarian can personally be a convinced altruist; what he will never accept is that the selfishness of others be rectified by force. Distinguished from perfectionism is *perfectism*, the political-ideological conception that considers perfection possible in all human activities, including economic and social ones. Libertarians are anti-perfectionists. Libertarian society itself

illegitimate. This implies the lawfulness of activities, actions and behaviors generally prohibited by law such as the production, exchange and consumption of drugs, medicines and alcohol[70], pornography, prostitution[71], homosexuality, different sexual practices, nudism, usury, gambling,

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will not be a perfect society; 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. 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. L. von Mises, *Liberalism* (1927), Liberty Fund, Indianapolis, 2005.

[69] On the libertarian opposition to egalitarianism and economic and social "rights", see *infra*, § 7.

[70] This right derives primarily from ethical reasons, self-ownership (the right of every person to ingest or inject the desired substances into his/her own body) and the freedom to undertake voluntary exchanges. For objections to prohibition based on economic and consequentialist rather than ethical considerations, see M. Thornton, *The Economics of Prohibition*, University of Utah Press, Salt Lake City, UT, 1991.

[71] These outcomes of the theory 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 theory, it does not offer a comprehensive personal morality or indications for individual life philosophies. A person does not have to be invaded in the body and property, but what he *does* with his body and goods (as long as he does not invade the body and goods of others) is irrelevant to libertarian theory. However, this does not mean that individual libertarians do not have their own complete moral system or systems of values regarding personal behavior. And it does not mean that, both politically and according to their personal morals, they approve or encourage transgressive or vicious behaviors or alternative lifestyles allowed by the principle of non-aggression. M.N. Rothbard, *Myths and Truths About Libertarianism*, in "Modern Age", Winter 1980, pp. 9-15. Libertarianism has the advantage that, although it is not a total moral structure, it does not conflict with the total moral structures chosen by individuals. 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. A distinction has recently emerged between "thin" and "thick" libertarians: the former limit the theory to the non-aggression principle and its developments, while the latter integrate this philosophical-political core with some cultural and/or sociological assumptions, or "left wing" (inclusion, non-discrimination, support for civil rights) or "right wing" (discrimination, territorial exclusion of some categories, religious morality; for an examination of the relationship between some traditional values and the implementation of a libertarian society see P. Vernaglione, *Paleolibertarismo*, in Rothbardiana, https://www.rothbard.it/teoria/paleolibertarismo.pdf, May 31, 2020). Walter Block, who places himself among the "thinists", believes that only these are the true libertarians (W. Block, K. Williamson, *Is Libertarianism Thick or Thin? Thin!*, cit.). It would be appropriate in this regard to distinguish two terms often used interchangeably: ethics and morals. The prevailing distinctive criterion (H. Kelsen) defines *ethics* as the science that studies *morality*. J. 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. For the purposes of the internal discourse in political philosophy, and for a better understanding of libertarian thought, I prefer, on the basis of the prevailing terminology among libertarian deontologists, a different conceptualization. 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; morality, on the other hand, 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. Some use the term *justice* to indicate the field included here in *ethics* (G. Casey: «The

prodigality, suicide, euthanasia at the request of the interested party, the refusal of life-saving treatments, the refusal of transfusions or transplants for religious reasons, self-mutilation, religious self-flagellation rituals, sadomasochistic practices, the free sale of organs, the refusal of the compulsory helmet and safety belts, surrogate pregnancy, insider trading[72]; 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[73].

Furthermore, since the State is the subject characterized by the imposition of a monopoly of force and of taxation, both coercive modes of action, the more coherent libertarians hope that the

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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». *Libertarian Anarchy*, p. 94). Another misunderstanding is also frequent: *tolerance* is said to be the distinctive element of libertarianism. This attitude is associated with - almost always derived from - a relativist point of view: one must be tolerant because there is no certainty that the ideas and behaviors of others are wrong. This, however, is not the most coherent libertarian position: 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 we unanimously agreed 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. The libertarian is not relativist; 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. Cfr. W. Block, *Milton Friedman on Intolerance: A Critique*, in "Libertarian Papers", 2, 41, 2010, http://libertarianpapers.org/wp-content/uploads/article/2010/lp-2-41.pdf.; S. Kinsella, *Milton Friedman on Intolerance, Liberty, Mises, Etc*., in http://blog.mises.org/archives/011004.asp, 9 novembre 2009; 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. Finally, libertarianism is also confused with individualism. In fact, with a crude individualism, according to which only individual actions are legitimate. But such an assertion would prevent cooperation. «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». W. Block, *Defending the Undefendable II*, p. xix. Nevertheless, the concept of *common good* is rejected or treated with great care by libertarians: it is nothing more than the sum of individual goods (utilities) achievable by social interactions, and this disaggregation is not conceptually compromised even when the goods produced generate externalities or when their legal structure takes on co-ownership forms.

[72] 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.

[73] Regarding abortion, there is no shared position among libertarians: those against consider it an aggression to the life of the fetus, those in favor a right deriving from the woman's self-ownership, so she can remove an unwanted guest from her body. Another aspect to highlight concerns "authoritarianism" in social interactions; which, if voluntary, is lawful for libertarians. On the other hand, in contemporary societies there are different dynamics characterized by the exercise of authority that are normally accepted, such as parents towards their children or teachers towards students.

services related to protection and justice will also be left to the market (competing private agencies), thus sanctioning the extinction of the State[74]. They are the *anarchocapitalists*[75].

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) 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.

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

[74] As Lew H. Rockwell Jr. points out, moral rules must be applied indiscriminately to all subjects, there cannot be a double standard for the State and for individuals: «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». L. H. Rockwell Jr., *Against the State: An Anarcho-Capitalist Manifesto*, Rockwell Communication, Auburn, AL, 2014, digital ed.

[75] Or *anarcho-libertarians* or *austro-libertarians*. Exponents of this vein are Murray Rothbard, Roy Childs jr., David Friedman, Morris e Linda Tannehill, Walter Block, Randy Barnett, Bruce Benson, Hans-Hermann Hoppe, Stephan Kinsella, Thomas Di Lorenzo, Lew H. Rockwell Jr., Terry Anderson, Peter J. Hill, Patrick Tinsley, Larry Sechrest, Roderick T. Long, Jorg G. Hulsmann, Edward P. Stringham. Instead, representatives of the "minarchic" (term coined by Samuel Konkin in 1971) current, that is, in favor of a minimal state, are Ayn Rand, Robert Nozick, Leonard E. Read, John Hospers, Tibor Machan, Richard Epstein, Douglas J. Den Uyl e Douglas B. Rasmussen, David Boaz, Charles Murray, David Kelley, Robert Bidinotto, Leland B. Yeager, Randall G. Holcombe. Within the minarchism we can distinguish the exponents of a minimal state based on a voluntary contribution (*No Taxation Minimal State*: Rand, Nozick) and the supporters of the *Taxation Minimal State*. 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 sometimes 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). To distinguish between the two, two criteria were followed here, one conceptual and one temporal. According to the first, libertarians (minarchists) are the supporters of a minimal State limited to the functions of justice, police protection, defense and enforcement of contracts. Consequently, authors who support a little-more-than-minimal or *small* State (production of further public goods, minor redistributive interventions, promotion of competition through antitrust rules) such as James Buchanan, Friederich von Hayek and Milton Friedman, are ascribed to liberalism. According to the temporal criterion, libertarians are minarchists of the second half of the twentieth century onwards, when the term "libertarian" began to spread. Therefore, an author who would have the title as Ludwig von Mises, whose most significant production is in the first half of the twentieth century, is not included; on the other hand, he assigned himself the label of (classical) "liberal".

killing of the enemy in war, euthanasia at the request of the patient, the death penalty and abortion[76]. Plus, the right to suppress one's life, with suicide.

Liberty Liberty 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 property-based conception, the "negative" freedom of classical liberals becomes the condition in which an individual must not be prevented from carrying out any action with his resources (provided that it does not consist in an attack on the property of others); put another way: liberty is the condition in which a person's rights over his body and material goods are not invaded. 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[77].

With this criterion of liberty as non-aggression all conflicts that some liberal definitions failed to settle are clearly resolved[78].

Human (liberty) rights[79], therefore, are nothing more than property rights, in the sense that they are circumscribed by self-ownership and external property. For example, there is no absolute right to freedom of expression; the fundamental question is: *where* the action is performed. I cannot break into your house and hold a speech; my freedom of speech is limited by your property right on the house. 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

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[76] On the conditions that for libertarians make a war and its ways of conduct "just" cf. M.N. Rothbard, *For a New Liberty*, pp. 275-276. On the death penalty and, as mentioned, on abortion there is no unanimity within libertarian thought, although on both issues the thesis of admissibility is prevalent.

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

[78] For example, Kant's formal maxim "everyone's freedom ends where the freedom of others begins", in which the criterion of demarcation is absent, or John Stuart Mill's "absence of harm".

[79] "Civil rights", in the nineteenth century meaning, that is, freedom "from the State", could largely coincide with libertarian liberties. However, today the label not only indicates "negative" liberties of individuals, but also includes forced integrationism and the attribution of privileges (often group privileges, therefore collectivistic) that imply the obligation of others to carry out positive actions; presented as (hidden behind the label of) anti-discriminatory policies: right to override others in a ranking for hiring or admitting to various services (reserved quotas); right not to suffer insulting or contemptuous or sarcastic epithets if one belongs to a given minority; the right to be chosen as a tenant if belonging to a given category; right to enter and use the services of places open to the public such as restaurants, hotels, shops; right to be assigned a home for a heterosexual or gay couple; right of the disabled to be able to move easily in the city; higher penalties for assaulting gay men or introducing a specific crime of homophobia; proclamation of free and 'equal' access to public resources such as roads or information tools; obligation to approve multiculturalism in schools; indiscriminate immigration. The strong publicistic and statist imprint of "civil rights" is therefore evident. The expression itself manifests the ambiguity of the concept: "civil" rights in fact presuppose the identification of the individual with the "citizen", therefore they are intimately connected with the existence of the State, which only can guarantee or grant these rights. It is therefore explained why they arouse hostility in libertarians (not in left-libertarians) and the expression is not accepted by them.

with the owner's consent (for example by renting a room, or signing a contract collaboration with a newspaper, or with a radio, or being invited)[80].

This incorporation of freedom into property does not necessarily work in the sense of limitation. For example, again with regard to freedom of expression, for libertarians the right to manifest thought prevails over reputation, since reputation is not an entity belonging to the slandered, but consists of the judgments contained in the minds of other people; and minds are their properties, and therefore cannot be controlled; words and opinions are not physical invasions. Hence the illegitimacy of the crimes of insulting, defamation, slander, vilification. And, for different reasons, of other crimes committed through the manifestation of thoughts or intentions, such as instigation[81], boycott, market-rigging, violation of copyright or blackmail[82]. The only freedom of expression not

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[80] This solution contrasts with the prevailing theory which, by sacralizing the freedom of manifestation of thought, presupposes an impossible absolute right of access for all. In economic terms, 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. 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.

A similar question arises in the context of public spaces. In "public places" (streets, squares, sidewalks, etc.) the dominant theory generally descends from the public nature of a good 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. 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. In this case, in fact, 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/her 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.

[81] For the more general issue of inchoate crimes, the crimes that represent an intermediate and prior step to the commission of another crime (attempted crimes, criminal conspiracy, instigation, incitement, aiding and abetting), see B. O'Neill, W. Block, *Inchoate Crime, Accessories and Constructive Malice in Libertarian Law*, in "Libertarian Papers", 5, 2, 2013, pp. 219-250, http://libertarianpapers.org/wp-content/uploads/article/2013/lp-5-2-3.pdf.

[82] 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 customs duties, 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*

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.

Furthermore, economic freedom is sometimes an important amplifier of personal or "civil" liberties. «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»[83].

Physical 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[84], which we already talked about in chapter 3. Here we only reiterate that the physical property extends to dimensions of economic freedom such as the freedom to operate a business, to save and to invest[85].

Overall Liberty, in "Libertarian Papers", 5, 1, 2012, pp. 89-110, http://libertarianpapers.org/wp-content/uploads/article/2013/lp-5-1-4.pdf.

[83] J. Queralt, *Are Economic Liberties Basic Rights?*, in J. Brennan, B. van der Vossen, D. Schmidtz, (eds.), *The Routledge Handbook of Libertarianism*, Routledge, New York, 2018, pp. 290-291. This finding makes problematic the operation of separation and hierarchization that the left, liberal and radical, operates between civil liberties and economic liberties, not giving the latter the same dignity assigned to the former.

[84] For liberals, however, 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. 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 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: Taxes and Justice*, Oxford University Press, Oxford, 2002. A reply to these theses is contained in E. Mack, *Libertarianism*, Polity Press, Cambridge, UK, 2018, pp. 129-137.

[85] 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.

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 Mark D. Friedman has observed, an individual may feel no need to express his views, however the First Amendment continues

The concept now illustrated allows to derive the concept, and a definition, of *right*. It is the translation of an ethical request into a legal bond. 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[86].

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; 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 action or to arbitrary and changing balancing of rights created *ad hoc* according to the circumstances.

7. 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.

Right to self-defense

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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. M.D. Friedman, *Libertarian Philosophy in the Real World: the Politics of Natural Rights*.

Some critics of libertarianism and some utilitarian libertarians have criticized the libertarianism of property rights by resorting to borderline cases called "lifeboat situations". They are 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. The exception introduced would put the coherence of the theory into difficulty. Rights-libertarians reply that such situations do not create any logical difficulty to theory. 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. W. Block, *Turning Their Coats For the State*, in http://www.lewrockwell.com/2003/02/walter-e-block/turning-their-coats-for-the-state/, February 17, 2003.

[86] 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 (of importance; so that any conflict between rights will be resolved by resorting to the established lexicographic order); for followers of more interventionist and egalitarian views, the sequence is exclusively chronological.

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)[87].

The right to self-defense implies the full right to possess weapons. 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.

The sanction

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*)[88].

Only the victim can take legal action against the attackers, not a prosecutor in the name of abstract entities such as "society" or "State" [89]. Furthermore, 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

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[87] In current 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 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.

[88] 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.

[89] In a libertarian society, 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).

(for example the death penalty in prison, or beatings in a cash fine, in this case in agreement with the offender). Therefore, proportionality establishes the *maximum* limit of the penalty[90].

Theory of contracts

Title-transfer theory: the legal transaction is valid only when there is actually the factual transfer of the object of the transaction.

Non-interventionist foreign policy

It is the international transposition of the domestic anti-statism. An intervention abroad represents an attack on three groups of people: the civilians of the attacked country; taxpayers of the aggressor state, who are seen to increase taxes to finance the war; and, if compulsory draft exists, the conscripts of the aggressor state. Therefore, it is immoral[91].

Support for national self-determination and secessions[92].

Critique of economic and social rights

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[90] The simple restitution-only stance is not enough. For example, theft must be sanctioned with the return of an overall value equal to something more than double the value of the property or the sum subtracted. In fact, the return of the goods or of the sum represents the compensation; then a sum 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; 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; and judicial and police costs (the costs of capture and/or finding the stolen property). In the case of murder, the sanction is the death penalty, but, as mentioned, the victim opposed to this sanction, through a testamentary will, can make explicit the type of alternative punishment for his possible killers (for W. Block if this will is missing, the decision lies with the victim's closest heir). In the event that the assault consists 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.
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*, Part II, § 13, pp. 85-96; *King on Punishment: A Comment*, in "Journal of Libertarian Studies", vol. 4, no. 2, Spring 1980, pp. 167-172. As for a disputed title dating far back in time, therefore difficult to evaluate (because for example a written document is missing), libertarians believe that the burden of proof must fall on those who contest the legitimacy of the current property. In the event of a rectification, ownership belongs to the heirs.

[91] M.N. Rothbard, *War, Peace, and the State*, in "The Standard", 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 L. von Mises Institute, Auburn, AL, 2000, pp. 115-132.

[92] 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. M.N. Rothbard, *National Liberation*, in "The Libertarian Forum" 1, no. 11, September 1, 1969; reprinted in *Egalitarianism as a Revolt Against Nature and Other Essays*, pp. 195-198.

As mentioned, the criterion of ownership allows only "negative" general rights, not also "positive" rights, i.e., rights to receive money, goods or services without a prior contract (rights of recipience), of which the holders can only enjoy if some people are forced to pay. Examples of these alleged 'rights' are medical care, education, housing, assistance, a job, a decent salary, quotas reserved. The arguments supporting this thesis are various.

1) By obliging other people's services, "positive" rights violate the non-aggression principle, therefore they conflict with "negative" liberty[93]. They 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[94].

2) 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[95]: for example, depending largely on the availability of goods and services, poorer soceties 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.

3) *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[96]; but this is unacceptable in terms of applied logic[97].

4) 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 (?) remuneration[98] - or because they depend on the free will of the contractors or on the overall structure of the economic system - such

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[93] 'Negative' rights are never in mutual conflict; 'positive' rights instead, in addition to conflicting with 'negative' ones, are also mutually conflicting. In fact, since the resources available to the State 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 affects the "right" to education, or the "right" to fair pay for other civil servants, or the "right" to unemployment benefit and so on.

[94] «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* Basic Books, New York, 1974, p. 169-171. 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, n. 3, 1979, pp. 284-285.

[95] 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.

[96] 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.

[97] For libertarianism, liability for omissive behavior arises only if such behavior violates contractual agreements.

[98] 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.

as the so-called 'right to work' intended as the right to employment. Human aspirations - well-being, wealth, health, a job, children, home, fame - are profoundly different from rights[99].

Against coercive egalitarianism

Even this libertarian claim, which in some respects overlaps the previous question, has been supported with different arguments, which are summarized below in six points.

1) Substantial equality can be of two types: about personal characteristics and economic. About the first, two subjects (or two entities) are equal if they are identical to each other with respect to a given attribute. This attribute must be measurable, so that comparison is possible. If Smith and John are both exactly six feet tall, then they may be said to be "equal" in height. Two or more people are "equal" in the fullest sense if they are identical in all their attributes. This condition coincides with *uniformity*. But in the real world it is impossible: intelligence, beauty, height, eye color, strength, health, skills, natural gifts, vocations, attitudes, character, tastes, and the combinations of all these elements vary from individual to individual[100] and are not measurable. Humanity is characterized by a high degree of variety, diversity, differentiation: in short, inequality.

It is argued that some personal skills are due to fate and not to merit[101]: given that being lucky does not mean being a thief, the fundamental aspect is that Einstein's extraordinary scientific creativity, as well as Gauguin's artistic creativity, must be considered their property and not collective property of society. Indeed, 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[102]. On the other hand, if a person does not deserve the fruit of his talent, it is even more 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[103]. And even luck, often indicated as an element

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[99] 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.

[100] It is an iron law of any organization that which provides for the formation of an élite or oligarchy of individuals who, as a consequence of superior skills, personality, charisma, intelligence, motivation, etc., assume its leadership (R. Michels). 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.

[101] J. Rawls, *A Theory of Justice*, Harvard University Press, Cambridge, MA, 1971.

[102] 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*, Rowman & Littlefield, Lanham, MD, 2005. R. 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, *Anarchy, State, and Utopia*. Although a libertarian structure 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.

[103] 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 objectionon is usually expressed by a question such as: "Why should

that generates "undeserved" gains or advantages, 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, the equalitarian effort to equalize people's living conditions risks, on the basis of the *slippery slope* argument, to reach the logical climax of the equalization of natural gifts. If the equalization of natural gifts is invoked, the conclusions can be aberrant: the obligation for an individual with healthy eyes to give an eye to a blind man or a kidney to a patient on dialysis.

2) However, the classic thesis of egalitarianists is economic equality, of results or of opportunities. If 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[104], they are not equal: the enjoyment of the Manhattan skyline by a New Yorker can never be equalized with that of an inhabitant of India, and vice versa: a New Yorker cannot benefit from swimming in the Ganges as well as an Indian. 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[105].

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.

[104] 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.

[105] M.N. Rothbard, *Power and Market,* Institute for Human Studies, Menlo Park, CA, 1970, chapter 6, section 5. Economic equality can be further divided into equality of outcome and equality of opportunity. Being the former radical egalitarianism now completely discredited, it is the latter to have more appeal. In the equality of opportunity, or equality at the starting points, everyone is placed in the same starting conditions; that is, everyone should have not *equal* income or assets, but *equal chances* to obtain any income or assets. The concept 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. Each person could not start from the same mark, because the world in which he was born was not created yesterday; it is varied and infinitely diverse and the different places, as seen above, necessarily imply different and unequaled conditions: the opportunity of the New Yorker to navigate around Manhattan can never be "leveled" with the opportunity of the Indian to swim in the Ganges. 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. So, in the end this type of equality actually translates into an option in favor of reducing the economic distances between individuals by attributing the so-called economic and social rights, in particular the availability of a minimum income or access to some services (mainly free or semi-free education and health); or through the "quotas" for specific categories or groups. Therefore, through wealth redistribution policies. However, there is no objective criterion that

justifies the imposition of a particular "distance" between income or wealth, in particular between the highest and the lowest; so redistributions are always arbitrary. Since people have different qualities and talents, even if starting from the same condition, they will achieve wealth and income of different entities over time, some very high, some medium, some low, etc.; therefore, if the equality of the starting points were achieved only once and forever, 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. Left-libertarians like H. Steiner, M. Otsuka, I. Carter, B. Ackermann and A. Alstott advocate an equality of starting points which translates into an egalitarian redistribution of resources *only once* and *at the beginning of the life* of each. In an imaginary world where everyone was the same age, one-off redistribution should take place when people become moral agents, capable of taking responsibility for their choices. Since this solution is impossible, in the real world the prescription becomes the substantial transfer of resources to young people, in a non-Welfarist free market context.

Another logical limit of redistribution in an egalitarian function 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.

A more recent egalitarianism is that which pertains to *groups* rather than 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.

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), the argument of individual dependence from the society in which it is immersed was used. 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. Some weaknesses of this reasoning have been highlighted. 1) On the market it is possible to evaluate the contribution of each to the total product through marginal productivity; 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; 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. 2) 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». T.R. Machan, *Libertarianism, For and Against*, p. 68. 3) The third 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». A. Mingardi, *L'intelligenza del denaro*, Marsilio, Venezia, 2013, p. 213, *my translation*. Furthermore, the benefits that the subject received from previous generations and from contemporaries had not been requested by him.

3) The redistributive State is an ethical State because it is not neutral from the point of view of values. The idea of *social justice* has an excellent reputation, despite the fact that both a rigorous definition and a solid theoretical foundation have been lacking. Its various declinations in practice have resulted in the invocation of a more or less accentuated egalitarianism, to be achieved through more or less intense redistributions of wealth. However, there is no objective and generally accepted idea of "fair" distribution. The right of people to the fruits of their work, for example, for many has an ethical force equal, if not superior, to the right of some to receive resources taken from others (redistribution). That is, 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[106].

4) Solidarity, to be the result of a moral option, must be voluntary, not mandatory[107].

5) 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[108]. Furthermore, the redistributive action, modifying (reducing) the profits of some to

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[106] «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 already examined with regard to "lifeboat situations" (see note 67 above): why the supporter of economic equality does not deprive himself of a part of his riches to save some starving people, for example in other areas of the world? And it would not be enough to deprive himself of a limited sum of money, because the logical implications of his argument dictate that the transfer must continue as long as his standard of living is higher than that of people who are starving; that is, in the end, the transfer must be of an amount that leaves only the amount of money that prevents him from starving to death, no more. The fact that he does not behave in this way shows that he himself does not take his argument seriously.

[107] 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.

[108] This consideration does not concern political philosophy in the strict sense. *Laissez faire* is not a form of social Darwinism, it *does not* prohibit voluntary assistance to those who need it on the basis of the argument that in the long run would weaken human fiber. Libertarianism, as mentioned, does not represent, and does not coincide with, a specific anthropological or sociological theory. However, to counter the accusation of being cynical and ruthless, since they are against the coercive help of people in difficulty, libertarians 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. Some authors have faced the insensitivity objection by attenuating the absoluteness of rights in specific cases: Eric Mach through a provisional redefinition of property boundaries (*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); Nicolàs Maloberti introducing a new category, the *exception rights*, which, attributed to the beneficiaries, automatically infringe the basic rights of the

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 system. 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[109]. So, it is not true 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.

6) The less noble sentiment of envy (H. Schoeck)[110] weighs more than the sentiment of justice in consenting to the redistribution of income[111].

In conclusion, a different distribution of wealth is lawful only if the effect of the free choice of some to donate to others.

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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 save which a person just needs to reach out. The author also legitimizes some moderate coercive economic transfers. N. Maloberti, *Libertarianism and Exception Rights*, in J. Brennan, B. van der Vossen, D. Schmidtz, (a cura di) *The Routledge Handbook of Libertarianism*, Routledge, New York, 2018, pp. 155-168.

[109] To arouse indignation, it is very frequent the presentation of statistics on the distribution of wealth as follows: "1% of the world population owns 40% of wealth" (2008 data). However, the fact that a large part of this wealth is made up of means of production (buildings, machinery, factories), functional to the production of those goods and services that increase the standard of living of the rest of the population, is also overlooked.

[110] H. Schoeck, *Envy: A Theory of Social Behavior* (1966), Harcourt, Brace & World, New York, 1969. Various theories of social psychology, such as the theory of social comparison, reference groups, status anxiety or relative deprivation, have supported the thesis that for many people their happiness is determined by confrontation with others and not by own condition in absolute terms. The explanation does not represent a justification for the complaint made by the complainant. Tibor R. Machan observed that the "rich" can be such thanks to aggressive action (for example the conquests of monarchs in the past) or thanks to their resourcefulness (Steve Jobs, Bill Gates). The negative prejudice towards the rich today dominant, Machan speculates, probably derives from the fact that for centuries the extraordinarily rich people achieved this status through unjust subtractions of the goods of others, protected by law. In the last two centuries, the take-off of economic activity has generated a large number of wealthy people who have become such thanks to their merits, because they are able to produce goods and services pleasing to buyers. However, many people do not distinguish the two different origins of wealth and extend aversion and suspicion to any type of wealthy. T.R. Machan, *Libertarianism, For and Against*, Roman & Littlefield, Lanham, MD, 2005, pp. 71-72.

[111] On egalitarianism, see M.N. Rothbard, *Egalitarianism As a Revolt Against Nature*, in "Modern Age", Fall 1973, pp. 348-357; *Egalitarianism and the Elites*, in "Review of Austrian Economics" 8, no. 2, 1995, pp. 39-57.

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, Lew Rockwell Jr., Jorg G. Hülsmann

objectivism
Ayn Rand, Morris e Linda Tannehill, Tibor Machan, John Hospers, David Kelley, Peter Schwartz, Leonard Peikoff, Paul Beaird, Eric Mack

aristotelism
Douglas Den Uyl, Douglas Rasmussen, Gary Chartier

basic rights
Robert Nozick, Mark D. Friedman

a priori of logic
Hans-Hermann Hoppe, Stephen Kinsella, Mark R. Crovelli, Frank van Dun

logical-empiricists
Randy Barnett, David Osterfeld, Tom Palmer, Pierre Lemieux

dialectic
Chris Sciabarra

intuitionism
Michael Huemer

Utilitarianism, consequentialism

David R. Steele, Leland Yeager, Raymond W. Bradford, Richard Epstein, Charles Murray, John Kelley, Jeffrey A. Miron

indirect utilitarianism
David Schmidtz

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

Bleeding heart libertarianism
Matt Zwolinski, John Tomasi

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