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Economic Neoliberalism: Property Right and Redistribution Policy

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***Abstract*—**In this paper, we will analyze the relationship between the neo-liberal concept of property rights and redistribution policy. This issue is back in the focus of interest due to the crisis 2008. The crisis has reaffirmed the influence of the state on the free-market processes. The interference of the state with property relations re-opened a classical question: is it legitimate to redistribute resources of a man in favor of another man with taxes? The dominant view is that the neoliberal philosophy of natural rights is incompatible with redistributive measures. In principle, this view can be accepted. However, when we look into the details of the theory of natural rights proposed by some coryphaei of neoliberal philosophy, such as Hayek, Nozick, Buchanan and Rothbard, we can see that it is not such an unequivocal view.

***Keywords*—**Economic neoliberalism, natural law, property, redistribution.

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I. Introduction

IN the past few years we have witnessed a reescalation of controversy related to the "return of the state", i.e. a tendency towards increasing the role of politics in market processes. Particularly, the issue of redistribution is in the focus of interest, primarily because policies which the leading economies of the European Union and the USA have promoted in response to the crisis. It has refocused on important questions of contemporary political philosophy, such as the issue of property rights. The opponents of redistributive measures have invoked the inviolability of property rights, arguing that policies like *Obamacare* explicitly violate the natural rights. For instance, Tom Perkins' letter addressed to *Wall Street Journal* has recently caused a lot of attention. He has warned of the radical left-wing turn of the US Administration. He has even accused the Administration of waging a real "class warfare" against the rich: "The rich have been attacked by increasing taxes and continuous imposition of regulations." According to these arguments, it is not only a class war, but also a betrayal of the principles on which the USA was founded. One of them is the property right, as an absolute right of an individual in which the state cannot legitimately intervene. To understand this controversy, it is necessary to accurately determine the status of property rights in contemporary political philosophy.

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II. The Legacy of John Locke

According to Locke's classical theory, the natural law of self-preservation is determined by the property as a natural right. The reason is that, for the survival of the mankind, a necessary precondition is the existence of property over the goods for life. [1] The concept of property in Locke's theory has two meanings. The "narrow" term is more important for us and it refers to property in the usual sense, i.e. ownership of property. Most authors believe that the famous chapter "*Of Property*" from the *Second Treatise*, uses the concept of property in the narrow sense, and generally, we can say that the political significance and the glory of Lock's theory of property is primarily concentrated on this narrow term. [2] The use of the concept of property in two different senses has enabled two different accents in the interpretation of Locke's political theory. The broad concept of ownership, as a rule, leads to the doctrine of classical liberalism and individualist political philosophy, while the narrow term of property usually leads to the doctrine of legitimacy of capitalism. However, in both cases there is no doubt that Locke's theory of property is not only an economic doctrine, but also a political concept, whose main intention is to define the *boundaries of personality*, that is what a government can or cannot legitimately do [3], [4].

Property in the *narrow* sense[1] is a natural right that individuals possess in the state of nature, because the principle of self-preservation involves an appropriation of natural resources necessary for self-preservation. If a man has a natural right to preservation with his own labour, then it follows that he must own something. Therefore, property is a-priory fact of natural law, and according to Locke, an obvious necessity.

Natural resources are given to the free use of man, but this does not yet concretize the right of individual property, because we speak about the "man in a generic sense", as in [2]. Natural law on appropriation for survival in the strict sense of the word does not yet individualize property, as in [1]. According to the natural law, natural resources are given to the mankind for use. Many theoreticians find the philosophical basis and legitimacy for redistribution in this fact. The importance and originality of Locke's theory of property is that it makes the transition from this concept to the right of individual property, which explains the right of every

[1] The broader concept of property is not just about material possessions, but rather includes the categories of freedom and life. In this context property is obviously not a matter of the social contract, but is an inherent fact within the state of the nature, in the sense that people *possess* themselves (self-ownership), and also possesses natural rights.

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individual to appropriate a part of what was originally given to the mankind.

Locke points to the fact that the nature was "given" to man (to cultivate it for his survival) which logically implies the existence of private property. Since resources, *before* they can be useful, must necessarily be possessed by someone - namely, by the one who takes them from the nature for usage [1]. Even if we imagine common property, it logically precedes private property: if we want to put an apple in the possession of all people, it must be picked up first, i.e. it must be in the possession of the hand which "picked" it up. This means that the private appropriation must exist by itself. In the form of a common property of "humanity", resources are only *potentially* possessed. When they become someone's property and *actual*, they are individualized and become "private".

The first point of Locke's argument is linking the property with labour. In fact, an individual is the owner of himself, and therefore he is also the owner of his body and mind. By working a man *exerts a part of his labour into the product*, adding to a natural resource something new that did not exist. Since *this labour is a part of him*, he integrates a part of himself in an *inanimate matter,* thus becoming its legitimate owner. Individuality (privacy) of labour is the basis for the individuality (privacy) of property [1]. The essence of Locke 's argument is that individual labour adds a new value to a natural resource that can be potentially owned by a person, which (since labour is individual) makes this resource no longer a pure natural resource, and common property. Resources are "prepared" by nature [5] for us, but are not simply "given" to us. Their taking over involves engagement (labour) of an individual. The category of labour, contained in the theory of property, is important because it explains why the redistributive measures are illegitimate. With these measures, the results of a man are used for the benefits of another person, which is obviously aggressive.

This definition of property has largely influenced liberal theory and remained a dominant explanation of property until today. However, it contains some controversy. One of them is the question of the *boundaries* of property and *size of appropriation.* How much a man can appropriate? Locke introduces a limit which asserts that natural law has limited the appropriation in two ways. The first condition is that a man can appropriate only as much as he can use without appropriated goods being lost, for example, spoilt. This condition follows from the premise of rationality of a man, since it is irrational to waste his own energy (labour) on something that will be spoilt unused [1]. The second condition is that "one leaves for others enough and as good", and is known as the "*Oasis-paradox*". The second condition follows from the fact that the natural law of self-preservation applies to all people, and therefore appropriation cannot go so far as to deny other people the resources for survival. Some scholars believe that Locke, at this point, presented the implied assertion that, if the first condition is fulfilled (i) (the appropriation to the extent of wastefulness), it automatically implies the fulfillment of (ii) (to others remains enough).[2]

For a complete discussion on the topic of redistribution it is important to notice that the legitimacy of private property in this formula, in principle, is independent of the *size of appropriation.* Any difference in the material status is legitimate, because it is the consequence of the unequal distribution of natural talents – a mere fact that people are created by nature with different capacities, and some manage to appropriate more than the others. It is a question about liberty and free will.

However, the emergence of enormous property differences based on private property demands some kind of moral justification of such a situation and it can be said that conceptualizing this justification is one of the central places of the theory of property. Locke found this justification in the idea of growth [2]. In fact, there is shortage in the state of nature, i.e. "man is not in the Garden of Eden," prosperity is not given in advance. People can achieve more than the sole nature can give only with labour. But people are not equally capable. By using natural talents some people can increase not only *their* wealth but also the *general* level of prosperity. Therefore, although material differences may appear, they are legitimate because every individual would have more than he would originally have. The fact is that the increased use of labour which overcomes the necessity for survival (condition of unwastefullness), creates a higher standard of living. Locke [1] illustrates this by comparing a day-labourer in England and the king in America. The day-labourer has no moral right to complain regardless of his poverty and wage labour, because thanks to the overall progress of the society to which he belongs, he, in fact, lives better than the king who lives in another, less developed society. The individual share in the produced wealth is uneven, but everyone has more than they previously had. This argument will be elaborated later by John Rawls as the "principle of maximization." [6]

The legitimacy of economic differences based on the growth is further enhanced by the proposition of the *growth* in human population, what in Locke's theory is not only an objective circumstance and necessity, but also a political requirement. It follows from the natural law of self-preservation, which is quantitatively neutral. However, natural resources, the "heritage" of humanity, are always the same, and the population growth is in inverse proportion to the ratio of resources per capita. Once a man takes a resource, he denies it to the others. It is obvious that the same or higher level of wealth with the population growth can be achieved only by increasing the efficiency and productivity of the human labour. Therefore, some scholars have concluded that it is not only legitimate but also desirable to form material differences. This ensures an efficient allocation of resources, in the sense

[2] Both of these conditions are subject to fierce criticism of the neo-liberal theorists, as absurd and inconsistent with Locke's definition of property. The most common complaints are: (i) any appropriation of resources is the limitation of the rights of others; and (ii) the limitations of property (so called "Colombo paradox") in the strict sense, is impossible to determine, as illustrated by famous Nozick's example with ketchup in the ocean.

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that the resources are distributed to those who use them most efficiently. To try to reduce the economic gap between Bill Gates and the author of the text (e.g. through redistribution of progressive tax rates for the rich) is anti-interest and anti-human in terms of humanity, because it violates the proposition of maximum growth. But even without this condition (the most efficient use), private property as such is fruitful since an egoistic and rational individual in the market economy, will not let his field decay, he will cultivate it and thus increase the value of existing resources [1].

This interpretation of the theory of property contains a justification of class differences that a capitalist society produces, and also the arguments against redistribution which has remained until now. Locke's theory of property has remained a baseline in the neoliberal argumentation. However, there have appeared some alternatives.

III. Hayek: Evolutionism

As it is well-known, [7], [8], expose an evolutionary model for the explanation of institutions[3], and therefore of the property [9]. In fact, Hayek believes that human society cannot be modeled but needs to develop spontaneously. He defined a "spontaneous order" as a system in which the elements that make it conform to certain rules. In this sense, the order is logically independent of any specific rules that must be applied in it. In principle, the social order may be constituted by any set of abstract rules. For example, it is possible that one of the rules is the regulation on the permission of the seizure of another person's property. However, a society which would try to apply such a rule would be in the state of anarchy very soon [8], as described by Hobbes. People would realize that this rule is irrational. Evolutionary selection is a way to get to the rules that allow relatively stable and progressive social order.

According to Hayek's theory of knowledge, society cannot in advance ("ex ante") deduce the appropriate standards, but it has to discover them in the process of "trial and error". Human society has been developing through the historical process of selection and struggle. Some communities that adopt certain institutions (norms, customs, etc.) that prove to be effective become more successful than the others and achieve dominance and survive. These institutions are not and need not be rationally justified, "nor do they sustain because everyone knows why they exist." [11] They are preserved with the power of custom, tradition and unconscious attachment. According to this evolutionary scheme, Hayek also interprets private property[4] as an institution: private property becomes dominant through the concept of social selection, as an accidental and unintended consequence of the competitive relationship of small communities, in which the communities that have adopted a system of private property proved productive, and therefore efficient and better capable of preserving and increasing their population [7].

IV. Nozick: "Principle of Border Crossing"

Robert Nozick [13] develops a theory of property rights in the context of general theory of ethics, which he calls "*entitlement theory*". It is based on three basic principles. [14] The first one is *the principle of justice in acquisition*. Nozick [13] completely takes over Locke's theory of property under the scheme labour+resources. Locke's concept of a person is a concept of law [3] - "prepolitical rights as legal facts" [15]. Nozick extensively discussed controversies related to Locke's additional condition (provisio) "that others are left enough and as good". This condition refers to the problem that arises in the structure of acquisition: does a legitimate appropriation of an object discredit the position of others? Nozick calls this condition "*catastrophe-scenario*". It describes a situation that legitimately acquiring some crucial resources may put all other people in a disadvantage position. The additional condition is obviously extremely "controversial" because it leaves a very subjective area to determine the appropriation that was under him illegitimate. But regardless of that, it exists as an objective possibility that someone appropriates all quantities of resources that others might need and thus blackmailing them, as illustrated by a famous example of the "*Oasis-paradox*". In modern world, this problem is exacerbated by the problems of monopoly, or by some ethical issues related to patents in the pharmaceutical industry, such as, for example, a physician, who legitimately uses his mental and physical capacity, reveals a medicine that everybody needs. On the basis of the de jure legitimate acquisition, he has de facto power over the others.

The second principle is *justice in transfer*: the transfer of property from one person to another is just if it is the result of non-violent voluntary choice of participants in the transfer (of the capital which they previously acquired legitimately). The form of a bilateral contract is an ideal type of transfer.[5] According to these two conditions, *distribution in a society is just if it is the result of rightful acquisition and rightful transfer*. Hence, the third principle follows: *the principle of rectification* – a request to compensate or annul identifiable historical injustices in the acquisition and transfer.[6] According to Nozick a legitimate society is a society that meets these conditions. Nozick illustrates the power of these principles with a radical question: why would the question of a "just" distribution in *a free society* be at all asked! Individuals legitimately appropriate resources in accordance with the principles explained by Locke. Then they bring goods to the market and sell them (exchange). If the price of the exchange

[3] New approaches widely debating about elements of evolutionism in Locke's theory of the state of nature. [10].

[4] Mises [12] explains the institution of private property through rational-utilitarian principle. Such an institution as property is, appears when people reach a level that can *rationally* weigh the effects of common and private property, and on the basis of superior efficacy of the concept of private property, make a decision.

[5] The additional condition also applies to transfer: "If the proviso excludes someone's appropriating all drinkable water in the world, it also excludes his purchasing it all." [13]

[6] Radical neo-liberal theorists, such as [16], thought that the principle of rectification is absurd because it is impossible to implement it in reality. It should prove the legitimacy of ownership infinitely backwards. This is a typical logical error of infinite regression.

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is not formed by force, but is the result of a voluntary bilateral contract, then it is not clear how we could possibly ask a question of just. [13]

However, in Nozick's theory of the social contract there is one principle that fundamentally affects the meaning of property. It emphasizes an additional paradox in the theory of property rights, namely the question of its legitimate *disposal*. Obviously, we cannot use our property if it threatens others, but what does the term "threatening" mean here? And who can arbitrate on that? Nozick [13] called this problem *"principle of border crossing":*

> "If doing act A would violate Q's rights unless condition C obtained, then someone who does not know that C obtains may not do A."

There is no doubt that the state has the right to punish those actions that are clearly destructive. This stems from the fact that individuals themselves have a natural right to do so, (self-defense), and this right can be transferred to the state. Nozick also believes that the state has the right to sanction those actions that are in the "high degree of risk," because performing potentially high-risk actions means exposing others to danger (fear, anxiety, etc.). However, the state also has to provide some compensation for the prohibition of such potentially non-hazardous activities! Nozick [13] demands "compensation", with which those who are prepared for a high-risky action should be compensated, which eventually may turn out to be harmless. Since we cannot know in advance whether an act is destructive, citizens who want to prevent this have an obligation to pay compensation to those citizens who would like this kind of action to be permissible. Nozick [13] uses the example of permission for an epileptic to participate in traffic. The state prohibits him to drive a car, but the citizens compensate for his losses through tax redistribution of resources (which, for example, allows the existence of free public transport for such people). In this way, Nozick introduces the concept of redistribution completely independent of the *genesis* of the property, based on the natural law of self-preservation. Although in this way redistribution occurs, in Nozick's view [13], it is not redistribution in the strict sense, but the compensation for giving up the high-risk actions. Therefore, this "redistribution" is actually a form of a bilateral contract. It is not redistribution in the sense that the neoliberals consider extensive state immoral – namely the institution that arbitrarily and forcibly redistributes resources from one group of people to another.

V. Murray Rothbard[7]

> "In the deepest sense, there are no other rights other than property right." [17]

Murray Rothbard has developed one of the extreme, the so-called "strong" theory of property. According to Rothbard, the right to property does not allow any possibility of theoretical relativism, and seeks to postulate it as an absolute right. The reason for such a radical approach is that every any human right depends on property. As we saw in Locke's theory, from the classical proposition of self-preservation, it is necessarily followed by the right to possession of what a man produced in order to survive:

> 'People are not floating wraiths; they are not self-subsistent entities; they can only survive and flourish by grappling with the earth around them. They must, for example, stand on land areas; they must also, in order to survive and maintain themselves, transform the resources given by nature into "consumer goods," into objects more suitable for their use and consumption. Food must be grown and eaten; minerals must be mined and then transformed into capital and then useful consumer goods, etc. Man, in other words, must own not only his own person, but also material objects for his control and use.' [18]

Or, if we consider the issue of the right to freedom of speech, the question is how this law is actually implemented. If we do not have the access the media (we exchange some of our property for that approach) that right remains a mere abstraction. In Rothbard's opinion [18], all natural rights can be reduced to the property right, including the right to life, which is in fact *self-ownership*.

As by their nature all rights are property rights, their violation is the violation of the contractual relationship between the parties. Rothbard [18] has derived his "strong" theory of property from self-ownership of a man over himself and the "axioms of non-aggression", and has presented it with the famous "Robinson Crusoe" model. [17] This model, through several undeniable, self-evident facts, explicitly shows the genesis, the status and the validity of property rights. The first self-evident fact is Robinson himself, as a body and the mind. Another fact is the world in which he lives. The third fact is that Robinson has different needs. Some of them *must* be met in order to survive (food), while others are not necessary for survival, but they motivate him. Robinson also recognizes that for the man to satisfy his needs it is necessary to develop a specific "technological knowledge" – to learn "*how*" to meet them. Unlike animals, a human being does not have instinctive knowledge of how to satisfy his needs and desires. The satisfaction of some of these wishes demands his minimal involvement, given that his environment provides the resources needed to satisfy some needs in abundance (e.g. air necessary for breathing), whereas other needs require more energy and inventiveness. "To sum up, he is not in the Garden of Eden." [17] It is in this fact that shortages of resources become apparent logical necessity of property rights: if Robinson were in the Garden of Eden no property rights would be required with respect to the fact that all people would have everything in abundance. Another direct connection with Locke's theory of property appears here: Robinson must take naturally provided resources and with his labour he *transforms* them into useful objects. In the absence of an instinctive knowledge of production, Robinson has to learn. And this, in turn, it means he needs to use his *reason*. Reason is firstly used to be perceive and interpret the need; and secondly, to conceive ways of satisfying them [17].

[7] Interpretation from [19].

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This argument very accurately interprets the "right to life". It is of fundamental importance for our discussion because it explicitly denies one of the most popular arguments for redistributive state activities:

Premise 1: Every man has the right to life;

Premise 2: Economic inequality may be as such that the poverty of some people de facto leads to their death;

Conclusion: resources should be redistributed in a way, at least, to the extent that no one stays below the subsistence minimum.

However, according to [17] the right to life is the right to live in accordance *with one's own abilities, skills and talents*. It does not include the obligation of another man to keep the other person alive. Robinson may not require from "nature" (islands) or from the state, society and so on to keep him alive. The right to life is not the right of a man to parasite his living on the account of another man, but is to forbid the other man to kill him. The role of the government is not to ensure the survival of all, but to prevent aggressive behavior towards each other. The government should provide a framework in which each person will, according to his capacity, work for his own benefit. The "Framework" is the protection of the "boundary of personality". In this framework, a man has a legitimate right, in accordance with Locke's principle of property ("mixing his labor with resources"), to appropriate goods for life. [18] Robinson is obviously free to use anything found on the island. However, he is a true owner, he possesses only what he can *currently* use, i.e. what he can "mingle with his work." He cannot simply "*declare*" his entire island. As soon as another person appears, and takes some resource, he, not Robinson is the owner. "Crusoe, in natural fact, owns his own self and the extension of his self into the material world, neither more nor less." [17] Robinson can claim to own only what he takes and processes, and cannot ask from the "God," the islands, nature, or "justice", "society" and so on, to give him something. It is completely transparent what he has the "right" to [13]. This mechanism, shown here on a model with one and two persons, can later be applied in complex societies.

Rothbard's interpretation of the origin of property rights is important because it contains the answer to some of the major theoretical controversies linked with Locke's theory of property. The first controversy is what Rothbard [17] called the "Colombo paradox". It treats the complex issue of limits of property rights over resources, for example, Colombo's of America. Did Neil Armstrong be stepping on the Moon, "mix" his labour with the whole Moon?[8] Nozick [13] has heightened this issue, arguing that any definition of "interference" here must be arbitrary. Rothbard believes that from the previous elaboration it is completely obvious that this issue is a false problem. If we consider it in the way Nozick did, then no property is possible, because a man, as soon as he was born and learns how to walk "mingles" his labour with the planet Earth, the galaxy and the entire universe. However, Locke clearly defined the meaning of the formula "mix labour and resources": it refers only and exclusively to what might be taken. No one has the right to "declare" the land, which is being cultivated by another person, his property. He can claim the ownership only to the plot that he really cultivates, i.e. the part with which *de facto* he mingles his work.

Another controversy concerns the so-called "additional condition" of property "*that others are left enough and as good*". In later theoretical debates this condition is called the "*Oasis-paradox*" or "catastrophe-scenario". It describes a situation in which one person, with legitimate "mix" of his labour with the resources, becomes the owner of a resource that is essential for the lives of other people. A characteristic example is one that we have already mentioned: the invention of a new medicine. Rothbard [16] called the "additional condition" an "unfortunate" rule, which is completely impossible to conceive without a complete negation of human freedom to use his capacity without coercion. The first thing Rothbard draws attention to is that the paradox becomes explicitly apurdan if you consider the situation of Robinson. "Oasis-paradox" does not exist in the situation of an isolated individual. Rothbard believes that the same is true in a situation with multiple individuals. To prove this, he [17] considers the situation in a provocative and extreme example of the shipwreck and the "lifeboat". Who had *the right* to board the lifeboats in the Titanic shipwreck? The key question is, "Who owns the lifeboat?" If the contract (included in the purchased ticket) defines the right to a lifeboat, the situation is explicitly clear. The company can offer different options for tickets, some of which may include this right, and some cheaper do not. If this is not specified, then the ship company, as the owner of lifeboats, has the right to determine who will be on the boat. The situation is again quite clear. And finally, if there is no owner, then the principle of ownership is in place: whoever occupy ("mix his labour with the resources") the boat is the legitimate owner. When those who occupied the boat first prevented others from climbing the boat, then, regardless of any moral dilemma, it is not in contradiction with the principle of non-aggression. They have the right to dispose the property however they want. But if the group which was left out of the boat would throw out those who had first occupied it, then it would be the aggressive behavior. According to Rothbard, the situation is completely clear and the confusion is brought up with quazi moral dilemma. A man has the right to use his personal capacity and natural resources to produce goods that become his property. It does not usurp anyone's right. Medicine did not exist prior to the invention, and it is absurd to claim that someone is damaged. [19] The physician employs his own abilities, time, energy, etc., and his labour contributes to the general level of wealth (new resource: medicine). But that does not mean that the result of his labor becomes common property. On the contrary, other people, if they want to get the medicine should employ their capacity and produce a resource (e.g. earn money) which is

[8] This issue has recently come back on the agenda again, since the company *Bigelow Aerospace* has expressed an ambition to perform the appropriation of land on the Moon. Thus, the company has questioned *the United Nations Outer Space Treaty*, which was signed by almost all countries of the world, and which denies the right of ownership of any State or an individual over the Moon. Since the Moon is apparently a "scarce" resource (we have just one Moon), the "Oasis-paradox" has also become problematic.

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required at the doctor's, and consequently enter the exchange. Given to this, we see that the scenario is not catastrophicality negative mechanism, but stimulating. This mechanism works towards the development of innovative potential of people, i.e. towards the development of humanity and acts directly on meeting the Locke's principle of "growth". Deprivation of the right to property of the medicine to those who produced it will have the opposite effect: it will discourage the physician-inventor and others to make the effort and employ their capacities. The "natural law of human interaction it becomes clear: not only the *production* is the essence of human prosperity and survival, but also the exchange." [17] If we give the right to a man to redistribute a part of resources of another man, he has no reason to work and develop as a person. If he acts rationally, he will abandon himself to idleness.

In this theoretical scheme it becomes clear why the neoliberal culture has postulated property as a superior value and redistribution as a sin. Redistribution policy and the communist ideology of "social property" are not only illegitimate (in the context of Locke's theory of property), but are also anti-human because, in final instances, they lower the engagement creative potential of people and the general level of resource utilization. Redistribution is not only a violation of the natural rights to property, but also anti beneficial action. The tragic fate of the communist states, misery and poverty that they have produced are the best evidence. A well-known formula from the communist era: "they cannot pay me so little as little I can work" speaks for itself about the anti-human effects of redistribution.

VI. Natural Equilibrium"

The theory of property proposed by James Buchanan is specific in the complex of neoliberal doctrines, because it does not treat the property as the basic ("primordial") right in the state of nature. On the contrary, according to Buchanan, from the standard description of the state of nature it is not possible to deduce the property.

The position that any individual takes *before* the social contract ("pre-constitutional" situation) is determined by the premises: (1) inequity of people in terms of ability; (2) inequity in terms of their preferences; (3) environmental inequities; (4) selfishness (beneficial acts); (5) reasonableness (*animal rationale*) [20]. This situation is pre-social "natural" or "anarchistic" equilibrium". It can generate a situation which recognizes private property, as a constitutional principle, but not necessarily. The position of persons A and B is defined by the fact that each of them exists and possesses some resources. If we can imagine a situation in which A is absolutely superior to B, it would be absurd from the point of view of the positions of (4) and (5) to recognize the existence of property of B, including his self-possession. With a social contract between interested and rational individuals in this situation, purely slave-holding society would be created. Thus, the social contract itself does not produce the necessity of recognizing property rights.

"Anarchist equilibrium" represents a situation existing before the social contract, and is defined by the natural capacities and talents of persons A and B, their personal preferences, and availability of resources. These functions intersect at a „point E". The point E is the point of "natural" equilibrium in which the activity ratio between the energy needed for defense and the energy needed to attack are annulled, and in which both activities do not make any progress. This position *cannot be reached with a contract* [20], but is defined with a natural distribution of talents and preferences. It is verified in the potential or real opposition. Anarchist equilibrium is an "initial political status quo" which defines what exists in social terms. As soon as there is at least one preference of the person A which is dependent on the reaction of B, A has to exchange some sort of resources with B, which implies that he has to admit the property right of B over the object of the exchange. Or, as Buchanan says, "something similar to 'property' is born out of non-contractual struggle in anarchy", as in [20] .However, it is obvious that the *degree* of recognition of the right is not unconditional, but depends on the initial "natural" distribution of abilities, talents, strengths, etc. Buchanan [20] criticizes popular theories of social contract which imply the assumption of equality of rights.

If we accept this interpretation, then, based on it, redistribution can be legitimized: a threat of B's revolution may seem big enough so that A consents to transfer of an amount of his goods to B. Redistribution may even be a *precondition* for the introduction of property rights in the "contract". In contrast to most of neoliberals, Buchanan believes [20] that the property right, as well as any other rights, cannot be treated in isolation from the collective phenomena, i.e. the interaction between persons. In particular, property right is a part of a more comprehensive contract.

VII. Conclusion

Previous argument allows us to bring more clarity to some controversies that are currently being discussed, both in the academic community and among politicians. A common thesis that neo-liberal political philosophy cannot contain redistributive recommendations is clearly presented in our paper [19]. The main argument is that it violates the freedom of man to its own his resources. Referencing to the paradoxes such as "Oasis-paradox" and others, is not consistent enough, and neoliberal theorists have convincingly disputed this argument. We believe that Rothbard has explicitly shown its absurdity. On the other hand, the demand for redistribution on the basis of the principle of self-preservation also proved to be unsustainable [21]: the human right to life does not mean that the other man has to support him. The established programs like *Obamacare* which are based on such premises are theoretically disputable, regardless of the fact that a large number of people who are denied basic health care, which causes moral and other dilemmas.

However, it would be premature to conclude that the neoliberal orthodoxy is completely free from redistributive elements. As we have seen, certain elements of Nozick's

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theory tend towards redistribution [22], [23], and the principle of "border crossing" *de facto* means the introduction of some kind of redistribution [24]. It becomes particularly important in situations of modern pollution issues or proliferation risk. *Fukushima* incident and other problems set clear limits to the free disposal of property. *Kyoto* Protocol *eo ipso* represents Nozick's principle of "border crossing".

On the other hand, the evolutionary model proposed by Hayek questions the genesis of property. The property is relativized, in the sense that it is no longer an undeniable a priory right. [25] This means that the evolutionary model does not absolutely exclude redistribution: the evolutionary explanation implies that it may happen that a society come in such a historical situation in which it is more efficient to give up private property [19]. Many people believe that this is happening in this moment of historical evolution of humanity.

This already indicates a very interesting challenge to the "strong" concept of property represented by Buchanan's model of anarchist equilibrium, and it is particularly relevant for the current controversies. [26] The current economic crisis has produced a strong impact on the poor who are exposed to enormous suffering. Thousands of Americans, for example, were left without their homes, and the same is happening to the working class throughout the developed world. This raises the willingness of the oppressed to revolt. *Occupy Wall Street* is only one version of the rebellion. "Point E" has clearly shifted towards redistribution. The redistributive role of the state uses the argument "humanism of interest": the rich consent to redistribute a part of their property so that the poor give up the revolt. Some fractions of the *Occupy* movement have proposed a unilateral withdrawal of bilateral contracts with the banks, by simply refusing to back the loan installments. If this practice would become massive, it would obviously endanger the existence of the capitalist system in general. Redistributive measures are a response to this threat. *Obamacare* is the consequence of changes in the balance of power in "anarchist equilibrium". In recent media appearances, the President Barack Obama repeatedly used a similar argument when he defended the "fairness" of redistributive reforms of his Administration against the criticism of the Republicans.

There is an additional argument. In another appearance, in which he defended *Obamacare*, the President Obama referred to the Buchanan position claiming that free market rules *are not neutral*. They are in favour of a certain group of people, namely the one that is effective under this set of rules. Therefore, redistributive activities are more or less just a compensation for the acceptance of such rules. The model extends the mechanism of *laissez faire* to the extreme theoretical possibilities: the natural rights are the result of free market exchange. Rothbard criticized both of these arguments by pointing to a key difference: the free market rules favour people who are successful under the rule of freedom and non-aggression. But this obviously introduces a meta-theoretical assumption that requires the postulation of freedom/non-aggression as a superior and untouchable principle. Various other attempts to establish theoretical foundation of property, from utilitarianism, consequentionalism, to evolutionism, have emerged as a reaction to this fact; an attempt to somehow justify property without introducing meta-theoretical principles.

From this sum up we can see that the neoliberal doctrine of property rights is divergent and it cannot be treated as a monolithic theoretical position. Therefore, the policy recommendations referring to a neoliberal discourse are different and often contradictory. Only some of them, which refer to a "strong" concept of rights, are absolutely incompatible with redistributive measures. But they introduce meta-theoretical assumptions, and are, therefore, often referred to as non-empirical, purely abstract structure. Others, which have tried to escape the meta-theoretical assumptions, develop a more concrete controversy but allows redistribution to a lesser or greater extent.

REFERENCES

[1] J. Locke, *Two Treatises of Government* Cambridge: Cambridge University Press. 1967 (1st ed.1689).
[2] K. Cavoski, „Politička filozofija Džona Loka“ („John Locke’s political philosophy“). Filozofske studije, V Belgrade 1974, pp. 142.
[3] G. Yaffe, *Liberty Worth the Name – Locke on Free Agency*. New Jersey: Princeton University Press, 2000. pp119-123.
[4] J. Bookman, *The Limits of Liberty: Between Anarchy and Leviathan.* Chicago: University of Chicago, 1984. pp. 358.
[5] T. Lloyd, *Locke on Governement*. London: Routledge, 2002. pp. 101.
[6] J. Rawls, *Theory of Justice*. Harvard University Press, 1999. pp. 47.
[7] F. A. Hayek, *The Constitution of Liberty*. London: Routledge, 1960. pp. 21-25.
[8] F. A. Hayek, *Law, Legislation and Liberty*. Chicago: University of Chicago Press, 1973. pp.11-59
[9] M. Naffisi “The Paradox of Principles: the dialectics of Hayek’s liberalism.” Economy and Society, (2000) 29 (2): 207–238.
[10] B. Hindess „Locke’s State of Nature.“ History of the Human Sciences, (2007) 20 (3): 4-8.
[11] F.A. Hayek, *Fatal Conceit.* Chicago: University of Chicago Press, 1991.
[12] L. Mises, *Socialism*. Indianapolis: Liberty Classic, 1981, pp.27-44.
[13] R. Nozick, *Anarchy, State and Utopia*. Oxford: Blackwell Publishers, 1999.
[14] M. Goldsmith „The Entitlement Theory of Justice Considered.“ Political Studies, XXVII (4): 578-579
[15] G. Forster *John Locke’s Politics of Moral Consensus*. Cambridge: Cambridge University Press, 2005. pp. 19.
[16] M. Rothbard, „Robert Nozick and Immaculate Conception of the State.” Journal of Libertarian Studies, (1978) I (1): 237.
[17] M. Rothbard, *The Ethics of Liberty*. New York: New York University Press, 1998.
[18] M. Rothbard, *For a New Liberty*. London: Macmillan, 2002.
[19] A. Savanovic, *Anarhokapitalizam (Anarcho-capitalism).* Banjaluka, the Faculty of Political Sciences, 2011.
[20] J. Buchanan, *The Limits of Liberty: Between Anarchy and Leviathan.* Chicago: University of Chicago 1975.
[21] R. Plant, *The Neo-liberal State.* Oxford: Oxford University Press, 2010.
[22] D. Gordon, *The Essential Rothbard.* Auburn: Ludwig von Mises Institute, 2007.
[23] J. Harris, “Rights and Resources - Libertarians and and the Right Life“. Ratio Juris, (2002) 15 (2), 109-121.
[24] K. Hyams, „Debate: Nozick’s Real Argument for the Minimal State.“ Journal of Political Philosophy, (2004) 12 (3): 353-364.
[25] M. Pennington, „Hayekian Political Economy and the Limits of Deliberative Democracy.“ Political Studies, (2003) 51 (4): 722-739.
[26] A. Savanovic, „Prirodna prava u modelu Anarhističkog equilibriuma”, Godišnjak Pravnog fakulteta, (2011) 33 (33): 243-258.