

Do *they* really care about us? On the limits of state intervention¹

Marko Dokić*, Vladimir Bakrač**, Branislav Radeljić***

*Faculty of Law, University of Montenegro, Montenegro

**Faculty of Philosophy, University of Montenegro, Montenegro

***College of Humanities and Social Sciences, United Arab Emirates University, UAE

Abstract


This paper examines the limits of state intervention through the relationship between freedom and equality, the rule of law and social justice, as well as through two highly contradictory concepts regarding the scope of government action – the concepts of minimal state and paternalistic state. Accordingly, we seek to identify a model capable of outlining the extent to which the state can intervene in the light of socially beneficial goals, but without compromising individual freedom. Since we cannot find such a model within the extreme positions of liberalism and socialism, this paper seeks to offer a satisfactory solution by mitigating some of the ideologically exclusive positions. It embraces Aristotle's teaching about the middle as a virtue and proposes sophisticated neoliberalism as a potential alternative to the status quo. Still, as insisted, the government should never be allowed to assume uncontrollable powers and create conditions for collectivist doctrines that recognize no individual freedom.


Key Words: equality, freedom, rule of law, social justice, state intervention


Introduction

The role of the state in the context of the limits of state intervention represents one of the central issues of social and political theory of the nineteenth and twentieth centuries. Its sound ideological basis has provided space for great discussions as to how far the government should go with its measures to penetrate different areas of social life (Bernstein, 1976; Carnoy, 1984; Davis & Proenza-Coles, 2008; Delanty &

¹ Corresponding author: Marko Dokić, markodokic@t-com.me

*  <https://orcid.org/0000-0002-6328-4683>

**  <https://orcid.org/0000-0002-8744-993X>

***  <https://orcid.org/0000-0002-0497-3470>

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Turner, 2011; Kogan, 1976). The debate took place not only between the supporters of liberalism and socialism as opposing ideologies, but also within the liberal tradition itself. As a result, the initial phase of liberalism (classical liberalism), which was explicitly against expanding the scope of government activity, gradually began to fade. It modified its rigid attitude to incorporate some elements of socialism allowing the state to expand its active involvement in various areas of social life. As summarized by Schlesinger (1963: 68), “[w]hen the growing complexity of industrial conditions required increasing government intervention to assure more equal opportunities, the liberal tradition, faithful to the goal rather than to the dogma, altered its view of the state ... There emerged the conception of a social welfare state, in which the national government had the express obligation to maintain high levels of employment in the economy, to supervise standards of life and labour, to regulate the methods of business competition, and to establish comprehensive patterns of social security.”

Thus, while classical liberalism essentially opposed state intervention as per the idea of a minimal state (night-watchman state), social liberalism did not perceive every activity of the state that went beyond the field of protection of the person and property as necessarily threatening to individual freedom. Consequently, classical liberals remained committed to the *laissez-faire* doctrine, while those who rejected its individualistic philosophy maintained that a self-regulating market and a minimal state could not guarantee individual freedom; in their view, it was only through the state’s engagement that appropriate conditions for self-realization of the individual could be ensured. Such a turn necessarily implied that the state should be fighting poverty and helping less prosperous social groups. On the other hand, the supporters of original liberalism objected to the government’s measures to aid the poor, remaining faithful to Smith’s teaching on the invisible hand of the market and the system of natural liberty: “No society can surely be flourishing and happy, of which the far greater part of the members are poor and miserable ... [Still,] for one very rich man there must be at least five hundred poor, and the affluence of the few supposes the indigence of the many. The affluence of the rich excites the indignation of the poor, who are often both driven by want, and prompted by envy, to invade his possessions” (Smith, 1776 [1985]: 80; see also Bradley, 2010; Kurz, 2016; Salter, 2012).

The dilemma is whether the state intervention in the service of establishing the highest possible level of socio-economic equality:

- endangers the individual freedom and freedom of choice on which liberalism was based in its original form;
- provides the necessary conditions for self-realization of individuals, which is not possible in contexts dominated by misery and poverty.

Correspondingly, should the state be minimal or paternalistic, or when it comes to the scope of government action, can there be something in-between? This dilemma is based on different evaluations of social values such as freedom and equality – one of the most debatable categories of political and legal theory – and therefore, are equality before the law and social equality compatible? In other

words, are the idea of the rule of law and the idea of social justice compatible? These questions are the main focus of this paper, seeking to examine whether it is possible to find an appropriate formula in relation to the limits of state intervention, which would be acceptable to the ideologically opposed parties. We start with a reflection upon the ideological basis underpinning the genesis of liberalism and basic aspects of socialism as a typical doctrine opposed to liberalism. Subsequently, we proceed by offering a range of insightful directions about the problem of state (non)-intervention in accordance with *pro et contra* arguments. Within this framework, we are primarily concerned with freedom and equality, the rule of law and social justice, as well as the notions of a minimal state and a paternalistic state. While welcoming Aristotle's teaching about the middle as a virtue, and with this in mind, sophisticated neoliberalism as a possible solution, we also warn against possible shifts and detrimental collectivist doctrines. We conclude by suggesting that unless the measures of state intervention can help achieve its purpose without a greater threat to the individual sphere of action and freedom of choice, then it is much better to suspend further government interference.

Ideological Frameworks of State Non-intervention

The set of ideas aimed at limiting the absolute and arbitrary power of the monarch to constitutionally protect individual rights began to take a clearer shape in the seventeenth century. John Locke promoted the idea of a limited government – a government limited by its purpose, which largely evolved around the protection of property (Locke, 1689 [1988]). Such a government does not encroach on the sphere of inalienable individual rights and freedoms. Locke believed that the arbitrary power was far worse than the natural state in which no public authority was established, and which otherwise served the representatives of the theory of the social contract to explain the act of creation of the state. In this way, the theory of the social contract in the philosophical sense represented the basis for the emergence of a constitution in the formal sense. While Locke laid the political foundation of liberalism, the economic foundation came later on with Adam Smith, as well as Thomas Robert Malthus's *An Essay on the Principle of Population* (1798 [2007]) and David Ricardo's *On the Principles of Political Economy and Taxation* (1817 [2015]). In short, the economic foundation was based on the idea of a system of natural liberty; that is, a self-regulating market in which individuals, in the absence of state intervention, directed by the invisible hand of the market inadvertently contributed to the social wealth (Smith, 1776 [1985]). This paved the way to classical liberalism, largely based on the *laissez-faire* doctrine and the idea of a minimal state inextricably linked to it. Its uniqueness was defined by individualism, liberty (the “negative” concept of liberty), equal treatment of all before the law and property, with the state being responsible to offer protection from legally unfounded attacks. In short, the classical liberals were fierce opponents of state intervention and the expansion of government activity outside the sphere of the protection of person and property.

However, due to industrialization and ever-growing urbanization, the adherence to the principles of the *laissez-faire* doctrine began to weaken, and the expansion of the scope of government activity was no longer seen as a threat to individual freedom. This was primarily due to the difficult position of the workers who kept requesting that the government improve their working conditions, healthcare protection, and insurance coverage. With the legal and political reforms in Great Britain in the 1930s and the extension of voting rights, a new type of liberalism, which grafted elements of democracy and socialism on the traditional constellation, started to emerge. The culmination of the turn towards socialism in England came with the Fabian Society: “Formulation and organization of existing opinion were all that was needed to turn possibilities into articulate policy, and this ‘organizing formulation’ the Fabians provided in a most workmanlike manner. They were reformers. The spirit of the times made socialists of them. They were genuine socialists because they aimed at helping in a fundamental reconstruction of society which in the end was to make economic care a public affair” (Schumpeter, 1943 [2003]: 323). In Germany, the scope of government activity also began to enlarge, albeit in a slightly different ideological context. Otto von Bismarck’s “paternalistic conservatism” controlled state intervention by channelling government measures in directions that would actually help to preserve the existing order. At the time, Bismarck himself feared revolutionary socialist ideas and therefore believed that workers had to be tightly bound by the order so that its revolutionary collapse would be properly prevented. For the sake of control, a range of insurance measures were incorporated into the social legislation in the 1880s (Simon, 1968: 71; see also Steinberg, 2011). In the United States, the consolidation of the belief in the necessity of state intervention commenced even before the great economic crisis, further culminating with Roosevelt’s social reforms of the 1930s (Birnbaum, 2001; Orloff, 1988; Puljiz, 1997). Back then, the supporters of traditional, classical liberalism were labelled as conservatives, while those who justified interventionist “welfare” policy (social liberals) retained the name of liberals (Farmer, 2005: 35–82; Ravlić, 2013: 56).

In any case, the second half of the nineteenth century pointed to the inevitability of the advent of the era of state intervention and the dominant influence of collectivist ideologies (see, for example, George & Wilding, 1985). Social equality became the central value of socialism, of both its revolutionary and reformist wings. The first variant is better known as communism, which through Marx’s teaching (dialectical materialism) – as a symbiosis of elements of Feuerbach’s and Hegel’s philosophy – introduced the concept of class struggle as “the essence of history” and an “instrument of progress” into social theory (Perry, 2000: 345). The class struggle provides for the establishment of a higher phase of social evolution, from the original community to a classless society. The transition from one phase to another (a higher phase) is always violent and results in the destruction of the old type of society, which is replaced by a new form of society. Therefore, it is a theory of revolutionary changes which is, at the same time, a theory of linear progress. Social equality is possible only in the final phase that will replace the capitalist order based on inequalities, the phase in which there are no more classes (the exploiters and the exploited). Accordingly, the idea of

the withering away of the state emerged, and Marx's theory has come to be labelled as a forerunner of the end-of-history theory, formulated more than one hundred years later by Francis Fukuyama (1992), but with a different ideological starting point: "The problem of the end of history can be put in the following way: Are there any 'contradictions' in our contemporary liberal democratic social order that would lead us to expect that the historical process will continue, and produce a new, higher order? ... A 'problem' does not become a 'contradiction' unless it is so serious that it not only cannot be solved within the system, but corrodes the legitimacy of the system itself such that the latter collapses under its own weight. For example, the steady impoverishment of the proletariat in capitalist societies was for Marx not just a 'problem', but a 'contradiction' because it would lead to a revolutionary situation that would bring down the entire structure of capitalist society and replace it with a different one" (Fukuyama, 1992: 136).

The reformist variant of socialism – social democracy – did not accept revolutionary changes as a type of social change, but insisted on changes within the system, yet incapable of shaking the foundations of the existing social order. These are legal, adaptive changes by which the system responds to new circumstances. Social democracy has also insisted on social equality, but unlike the radical wing, it has not deemed it possible in a classless society. However, with the aim of establishing social equality, social democracy relies on fiscal means to redistribute wealth from rich to poor, while calling for social justice. Social democracy began to take shape in the late nineteenth and early twentieth centuries, so even Bismarck's 1878 Anti-socialist Law, planning to keep the Social Democratic Party out of power, did not bear fruit: "Many social democratic associations reconstituted themselves as social clubs. So-called men of confidence (*Vertrauensmänner*) acted as channels of communication between the local groups and the party leadership ... The party newspaper *Sozial-Demokrat* was published first in Switzerland and later on in London, and smuggled into the Reich by a sophisticated system of deception ... Ultimately, German social democracy emerged from this period of persecution a stronger, more united and disciplined party" (Berger, 2000: 74). In fact, the then ideological form of socialism actually assisted consolidation of the already softened form of liberalism from the end of the nineteenth century with the idea of state intervention and the accompanying promotion of solidarity and social justice. Consequently, democracy was both a means and a goal, "a means since socialism is achievable through democracy (universal suffrage), and a goal since democracy is a political form of achieved socialism" (Ravlić, 2013: 134).

The essence is that social democracy does not strive for a destruction of the capitalist order, but for its reform based on fair distribution of wealth. One of the best-known examples of such a comprehensive reorganization of the capitalist order was the so-called welfare state in the post-Second World War period. It was based on a broad set of government measures inspired by John Maynard Keynes' macroeconomic doctrine, referring to issues of full employment, the role of trade unions, expansive fiscal and monetary policy, and a highly diversified system of social security. Although considered a typical post-war concept (an attempt to overcome various social problems from the previous period by redefining the role

of the state), the foundations of the welfare state were laid earlier; they are found in Bismarck's social policy, as well as the wartime Beveridge Report (1942). The report saw the social security system as an integral part of the policy of social prosperity, while cooperation between the individual and the state served to fight the five giant evils: squalor, disease, ignorance, want, and idleness.

However, the failure of the ideological concept of the welfare state to bring about good results – it was characterized by inflation and branched bureaucracy, instead – triggered a revitalization of the intellectual legacy of classical liberalism. This resulted not only in erosion of confidence in the appropriateness of state intervention, but also in a complete dismantling of the welfare state. Nevertheless, despite the disadvantages of the welfare state, such a concept had its merits not only in overcoming certain contradictions and crises of the post-civil society, but also in relativizing the classic division into the left- and the right-wing camps by strengthening the position of the reformist left in relation to its revolutionary variant, as it succeeded in holding the moderate right socially accountable (Cvetičanin, 2008: 483). Its foundations are based on compromise and consensus, which has significantly contributed to overcoming the accumulated social problems and opposing views of different ideologies. Perhaps this is precisely why the welfare state has been interpreted in several ways; while moderate collectivists (social liberals and social-liberal conservatives) perceived it as an attempt to stabilize capitalism, for social democrats it was a way to overcome capitalism, Marxists understood it as a camouflaged capitalist state, and the new right-wing (neoliberals) as a path to socialism, i.e. a path to slavery (Nedović, 1995:6).

Following the abandonment of the ideological concept of the welfare state, the ideas of a minimal state and a self-regulating market freed from government intervention – largely evolving around a *laissez-faire* economy and the philosophy of extreme individualism – took over the United States and the United Kingdom in the late 1970s and 1980s. A new form of liberalism emerged, the so-called conservative liberalism or neoliberalism, which was incorporated into the politics of Ronald Reagan and Margaret Thatcher (Pierson, 1994). It is best illustrated by Reagan's message that the government is not the solution to social problems but, on the contrary, the government itself is a problem. Thus, state intervention is harmful and fatal to individual freedom, and therefore the scope of government activity should be reduced to the minimum, as per the advocacy of classical liberals. However, pursuing such a move was extremely difficult given that the state had been distant from its original liberal vision for almost a century; any withdrawal of the state from various areas of social life and thus limiting of the scope of government action would have proved very painful for the citizens accustomed to different kinds of state aid.

Freedom and Equality

Freedom, equality, and justice represent social values of the utmost importance to legal and political theory (Dorn, 2014; Valentini, 2011). However, as values are not

individual but belong to groups (since their real creators are social groups), they are always a product of social divisions, the emergence of which ultimately generates a fresh ideology. As such, ideology is defined by values, standpoints, and sets of goals, all together representing a basis on which social groups develop their activities to realize certain interests (Pečujlić & Milić, 1991: 200). Alongside this understanding, the supporters of one ideology are likely to assign far greater importance to a particular value than the supporters of other ideologies. This is especially the case when there is a sort of tension between social values, suggesting that the realization of one is likely to jeopardize, to some degree, realization of the other. Freedom and equality are a good example. While admittedly there is no tension between freedom and all forms of equality (just as there is no tension between equality and all notions of freedom), there are several definitions of freedom and equality that are often opposed to each other. Therefore, there is as much of a difference between a “negative” and a “positive” understanding of freedom as there is between equality before the law and socio-economic equality (Berlin, 1969; Bowring, 2015; Dimova-Cookson, 2019; Frederick, 2016). In this paper, since we are primarily concerned with the tensions between values within ideological spectrums, we connect negative freedom and equality before the law (legal equality) to liberal ideology, i.e. parts of liberal tradition such as classical liberalism and conservative liberalism (neoliberalism). We connect positive freedom and the ideal of socio-economic equality to socialist ideology, i.e. parts of liberal tradition such as the so-called social liberalism.

Negative freedom or freedom “from” means the absence of arbitrary coercion, not only through preventing usurpation of individual rights of an individual by another or other individuals; at the same time, it means absence through limiting public authorities or, in other words, through bringing the authorities within the limits of the law, to protect individual freedom (Dowding & van Hees, 2007; Frumer, 2019; Shnayderman, 2014). Such a perception of freedom, when it comes to its relation to equality, can only be compatible with legal equality that implies equality of treatment. If, on the other hand, we talk about its relation to socio-economic equality, which is most often referred to in political theory when discussing the scope of government action, then we can say that these values are incompatible. Since members of a society are of different material status, the socio-economic equality (or an attempt to eventually reach that goal) cannot be achieved by equality of treatment, but only by the principle of levelling that is in direct opposition to it. This suggests that the government must identify groups in the market that do not get a share of the profit, which they are morally entitled to. Therefore, as a consequence, state intervention is aimed at taking on a bigger (as a rule, fiscal) burden by the more successful and wealthy ones to get closer to the desired goal – equalizing the social status of citizens.

From a different perspective, positive freedom or freedom “for” implies that society must be provided with adequate conditions so that self-realization of individuals can take place (Christman, 2016; Hansen, 2015; Miller, 2015; Simhony, 2016). Accordingly, the government must play an active role in the process by intervening in various spheres of the society – self-realization cannot be achieved in conditions of

poverty. As some studies conclude, “[t]hose experiencing poverty show significantly lower levels of confidence in their own ability to succeed. This has negative physical and psychological health consequences, along with reduced educational and professional attainment. Poverty increases the risk of mental illnesses, including schizophrenia, depression, anxiety, and substance addiction. Resource scarcity induces a “scarcity mindset”, characterized by increased focus on immediate goals at the expense of peripheral tasks and long-term planning. This may contribute to perpetuating the cycle of poverty” (Fell & Hewstone, 2015). Thus, positive freedom is in contrast with the rigidly interpreted equality before the law because, to improve a person’s position (not everyone is equal at the start), it is necessary to resort to measures based on different treatment of diverse categories of citizens. So, if people are not equal – and they are not – then they should not get the same but different, proportionate compensation based on merit; to use Aristotle’s terminology, this equality is actually geometric. It refers to the position occupied by an individual in the society and the distribution is conditioned by certain criteria that do nothing more but further consolidate the distributive approach.

When we consider the relationship between freedom and equality in the world of ideologies, we associate freedom with (classical and conservative) liberal opposition to the expanding scope of government activity to preserve individual freedom as a supreme value. Equality is perceived as a value that collectivist ideologies strive for. However, the necessity to deviate from the philosophy of extreme individualism and recognize the need for the government to play a more active role in certain areas has been acknowledged in one stream of liberal ideology, that of social liberalism. Viewed from the perspective of extremely individualistic positions in liberalism, these two values are incompatible and there is no way to reconcile them. On the other hand, if we employ a revisionist variant of liberal thought – eclectic to a large extent given that it combines elements of liberalism, socialism, and democracy – then the values of freedom and equality do not have to be in opposition for as long as freedom is not threatened by state intervention. In contrast to classical and especially conservative liberalism, the issue of incompatibility of freedom and equality is not questioned within socialist ideology; its understanding of freedom is different.

The Rule of Law and Social Justice

The relationship between the ideas of the rule of law and social justice is a key issue in political theory, on the basis of which we can easily describe and evaluate a person’s ideological position. In this sense, we distinguish between:

- 1) those who prioritize the rule of law, seeing it as incompatible with the idea of social justice and arguing that the realization of the requirements imposed by social justice always jeopardizes the idea of the rule of law;
- 2) those who believe that the right, with its neutrality and equality before the law, undermines the concept of social justice and that the rule of law in that sense is just one of the ideas in the service of maintaining the order based on social inequalities;

- 3) those who believe that the rule of law and social justice are not incompatible and that they can coexist within the constitutional order.

However, before we proceed with the analysis of the above points, we need to define the two ideas in question.

The rule of law is an idea aimed at preserving individual freedom, and with this in mind, it is a request to control public authorities. We can speak of individual freedom only if the authorities are brought within the bounds of the law. The presence of discretion and arbitrariness means absence of limited government and individual freedom. In fact, the idea of ruling in accordance with the law is not new. It emerged within English constitutional history and was the outcome of a centuries-long struggle aimed at placing the monarch within the limits of the law. The traces of this idea are found in documents such as *Magna Carta Libertatum* (1215), *The Petition of Right* (1628), *The Habeas Corpus Act* (1679) and *The Act of Settlement* (1701), culminating in the nineteenth century with *Introduction to the Study of the Law of the Constitution*, written by Albert Venn Dicey. He maintained that the absence of arbitrary authority and legal equality or equality before the law were main components and prerequisites of the rule of law (Dicey, 1885 [1982]: 110–115). It is exactly equality before the law that represents the *conditio sine qua non* of the rule of law and the element due to which this idea is in conflict with the idea of social justice. On the other hand, social justice is about distributive justice, which concerns a person's position within society and the state–citizen relationship. Therefore, since people are not equal, they should not receive and enjoy the same portions but different ones, as per proportionality; division and distribution are decided in accordance with merit. Social justice is the result of political and economic changes of the new age (Koler, 2005) and contrary to the rule of law, it subject to a different treatment. In this sense, there is a tension between these two concepts which, depending on ideological positions, can be resolved in legal and political theory in several ways.

The position of classical liberalism is that the rule of law and social justice cannot go together because the act of state intervention to correct social inequalities undermines the fundamental principle of individual freedom – equality before the law. The understanding of the rule of law that is close to classical liberals, and later neoliberals, is a meta-legal understanding of the rule of law. As such it does not imply the rule of a particular law, but the rule of what the law should be. Therefore, for a law to be valid, it must possess certain qualities – the most important of which regards the principle of generality, which reduces the space for arbitrariness and discretion (Kramer, 2007; Lucy, 2009; Shapiro, 1994). Given that social justice, due to social inequalities, implies the redistribution and consequently different treatment of citizens, laws can no longer be general and apply equally to all. Hence, the representatives of these variants of liberalism believe that social justice jeopardizes individual freedom. In his works, Friedrich August von Hayek (1960; 1982) devotes much space to the critique of the concept of social justice. He argues that the system of merit-based rewarding, which is implied by social justice, is simply impossible in a free society based on the rule of law since we are unable to isolate

all the circumstances that determine the very merit. We can never know for sure how something is likely to be valued by others in the market – that result is, by nature, always unpredictable. For Hayek, social justice presupposes the impossible; in fact, it presupposes what the argument of liberty rejects in particular.

The standpoint of Marxist social theory is that the law is an instrument of the will of the ruling class and in that sense protects the order based on private property. As this is considered the cause of all evil in the society, the idea of the rule of law is not compatible with the idea of an egalitarian society. “Do not the bourgeois assert that the present-day distribution is ‘fair’? And is it not, in fact, the only ‘fair’ distribution on the basis of the present-day mode of production? Are economic relations regulated by legal conceptions, or do not, on the contrary, legal relations arise out of economic ones? Have not also the socialist sectarians the most varied notions about ‘fair’ distribution?” (Marx, 1875; see also Mandel, 1986; Nielsen, 1988; Sitton, 2010). As law acts neutrally, expected to serve the interests of all citizens equally, both of those who have much and those who have almost nothing, it is the means used by the ruling class to preserve the existing capitalist order. To illustrate the paradox of the system in place, the novelist Anatole France (1894 [1914]: C7) observed: “For the poor it consists in sustaining and preserving the wealthy in their power and their laziness. The poor must work for this, in presence of the majestic quality of the law which prohibits the wealthy as well as the poor from sleeping under the bridges, from begging in the streets, and from stealing bread ... A man is called dangerous when he says that there are wretched people. There are laws against indignation and pity.”

Social democracy and social liberalism, as eclectic ideological forms, believe that the rule of law and social justice are not mutually exclusive. Here, we should emphasize that they no longer represent a meta-legal understanding of the rule of law, but they give it a fresh meaning that is directly related to social changes and transformation of the state. The new understanding of the rule of law affected the meta-legal understanding in two ways. There was a distinction between arbitrary and discretionary power, and the latter – which Dicey considered incompatible with the preservation of individual freedom – came to be viewed as necessary to achieve social welfare. Therefore, it was only arbitrary power that was marked as incompatible with the idea of the rule of law. In addition, with the abandonment of the *laissez-faire* doctrine and the expansion of the scope of government, the ideas shaping the non-interventionist theory (such as negative freedom and equality before the law) lost adequacy in front of the emerging social changes that called for a more active role of the state in different areas of social life. In such circumstances, the tradition of classical liberalism and the old Whig teaching could not respond to the challenges of the new age, which were also aimed at realizing some other values and not only at preserving individual freedom and private property. The new set of social circumstances also required adjustments in the comprehension of the rule of law. Thus, there was a belief that the rule of law could be a constituent of both the welfare state and the social state.

A Minimal State or a Paternalistic State?

The idea of a minimal state was central to classical liberalism and its less radical form, conservative liberalism, because it was believed that only such a state could guarantee individual freedom – the basic value of these liberalisms. A minimal state is a state that has no other function than the protection of the person and property. Nineteenth-century England is a case in point to illustrate this trend. As described by A. J. P. Taylor (1965: 1), “[u]ntil August 1914 a sensible, law-abiding Englishman could pass through life and hardly notice the existence of the state, beyond the post office and the policeman ... He had no official number or identity card. He could travel abroad or leave his country for ever without a passport or any sort of official permission. Unlike the countries of the European continent, the state did not require its citizens to perform military service. Substantial householders were occasionally called on for jury service. Otherwise, only those helped the state who wished to do so. The Englishmen paid taxes on a modest scale ... [B]roadly speaking, the state acted only to help those who could not help themselves. It left the adult citizen alone.” This is, of course, facilitated by the existence of protective functions. Thus, the state should defend its borders from outside aggressors and maintain peace, order, and justice at the internal level; those are the activities of the army, police, and courts, and the survival of society itself depends on them (Rand, 1964).

Such a notion of the state excludes state intervention in all other spheres of social life because the state is considered a potential usurper of individual freedom. It is a necessary evil since it is only the state that can protect freedom of an individual from being jeopardized by another individual or group of individuals. However, for the state itself not to become the usurper, the scope of government activity must be narrowed as much as possible, whereas the authority itself must be limited by legal norms and procedures that leave no room for arbitrariness.

If the essential definition of a minimal state would imply only one key function, then it could be argued that a minimal state by its nature does not exclusively have to be tied to liberalism as a political ideology; it could also be tied to socialism if social protection and security of citizens are its main functions. However, this would not be appropriate, because a socialist minimal state would necessarily turn into a socialist maximal state. This is because its purpose – social protection and security of citizens – requires the government to take all sorts of measures in all sorts of social spheres, covering health, justice, education, employment, and so on. Therefore, when we talk about a minimal state, we always mean a liberal minimal state that recognizes no other activities but protection of property, as per the understanding of Locke (1689 [1988]), thus referring not only to material goods but also life and liberty. Such a state is always, by its nature, non-interventionist.

In the nineteenth century, the idea of a minimal state was primarily featured within the framework of social Darwinist theory (this was individualistic, not collectivist Darwinism). The first variant was related to the *laissez-faire* doctrine, while the second was an integral part of racism and imperialism. We can therefore

use social Darwinism to defend different ideological positions, but it has proved to be particularly effective in justifying the laissez-faire economy. Like in nature, characterized by a constant struggle for survival between organisms in which only the most capable ones survive, social Darwinists maintain that the market and society experience the same challenges. Accordingly, everything is about a natural law that must not be altered by state intervention, which is nothing but detrimental given that it favours less successful members of the society. In this respect, the poverty of certain categories of the population is a consequence of the laws of nature; those who are incompetent and lazy cannot persevere in the struggle for survival. Therefore, it follows that state intervention must be wrong since it violates the laws of nature and helps those who have invested the least effort and have not been successful in the market (see, for example, Spencer, 1884 [1981]; Sumner, 1911).

In the twentieth century, the above idea found its basis in the political theory of Robert Nozick (1974). He believes that the state must be limited to the narrow functions of protecting the person and property, excluding the obligation to take care of citizens who are unable to take care of themselves due to poverty. In this way, Nozick creates all the theoretical assumptions for an ultra-minimal state, which is the only one that cannot endanger individual freedom. In his view, “[t]here are only individual people, different individual people, with their own individual lives. Using one of these people for the benefit of others, uses him and benefits the others. Nothing more. What happens is that something is done to him for the sake of others. Talk of an overall social good covers this up ... *He* does not get some overbalancing good from his sacrifice, and no one is entitled to force this upon him ... There is no justified sacrifice of some of us for others” (1974: 32–33; see also Schmidtz, 2002; Šturanović, 2018; Wolff, 1991). However, since Nozick’s conception of a minimal state must rely on the monopoly of state coercion to protect the person and property, we cannot rule out the possibility that, at some point, it will exceed its narrow protective functions and thus threaten individual freedom (Barry, 1989). This objection was especially emphasized by the anarcho-capitalists.

On the other hand, a paternalistic state means a state that interferes in the private sphere of individuals, not allowing them the freedom of choice by imposing or prohibiting certain activities that concern them. While the minimal state represented the ideal of individualism, the paternalistic state, as its antipode, was the product of the rise of collectivism in the twentieth century (Greenleaf, 1983). It is about the government whose behaviour could be compared to that of the paternal authority over minor children. Similarly, citizens, in matters concerning themselves, cannot undertake any activity without a permission of their tutor, the state. This suggests that the state knows better than the very individual who they require to make rational decisions and, ultimately, be free. In other words, the collective knows better than the individual what actions contribute to their freedom and well-being. Therefore, just as a father can force his minor children to do this or that, so too can the state force its citizens to behave in a way that the state deems appropriate and contributing to their “well-being”. Thus, the paternalistic state is based on Rousseau’s paradox of freedom, according to which the state can force the individual to be free (Rousseau, 1762 [1997]).

Yet there is a major difference between paternal authority over children and the paternalistic authority of the state over citizens. More precisely, whereas the role of a father is to serve as a benefactor to his children, the role of the government of a paternalistic state is quite the opposite – here individuals find themselves in the role of a benefactor to the state. This is best illustrated by Herbert Spencer in his work *The Principles of Ethics*: “Fatherhood habitually implies ownership of the means by which children and dependents are supported; and something like such ownership continued under the patriarchal form of rule. But in developed nations not only is this trait absent, but the opposite trait is present. The governing agent does not now support those over whom it exercises authority, but those over whom it exercises authority support the governing agent. Under paternal rule, truly so called, the possessor of the power, being possessor of everything else, was benefactor to his children as well as controller of them; whereas a modern government, along with a power which is in chief measure given by those who are supposed to stand in the place of children, cannot be in such sense a benefactor, but has to receive from the children the means which enable it to do anything for them” (Spencer, 1892 [1978]: 236). Still, we should not ignore the fact that it is usually under the paternalistic form of government that an extension of state measures occurs, especially within the context of neoliberalism. Such an approach is not right because state intervention outside those areas close to neoliberals does not always imply paternalistic government. Indeed, if state intervention takes on greater proportions, and such a danger is real, then there can be no equality between moderate measures of government in the field of economy, and social policy and the paternalistic state.

Possible Solutions?

Having considered the dominant dilemmas concerning the role of the state, we try to identify a sound formula showing the extent to which the state can intervene having in mind socially useful goals, but without endangering individual rights and freedoms. While it is difficult to find such a formula within the extreme positions of liberalism and socialism, we question whether their eclectic forms can help instead, but also whether softening some of the ideologically exclusive positions can lead to a solution.

Aristotle’s *Nicomachean Ethics* (340 BC [2012]) argues that virtue always occupies the middle ground between two extremes. Therefore, the essence of virtue is the middle, which represents neither too much nor too little. For example, pride is a virtue as the middle ground between humility and arrogance, and justice between doing injustice and suffering injustice. Can Aristotle’s teaching be applied to the scope of government action? On the one hand, there are ideological positions that a priori reject any kind of state intervention outside the sphere covered by a minimal state. On the other hand, there are those that believe in the limitless government activity in the field of economy and social policy – so Aristotle’s formula comes across as a suitable solution. If accepted, can those ideological variants that unite

elements of opposing ideologies, such as social liberalism, be called the middle? Can eclectic ideological forms be a virtue in terms of the scope of state intervention?

Still, even with these eclectic ideological variants, there is a problem which questions the adequacy of their applicability. More precisely, given that they combine elements of individualism and collectivism, there is always a risk that the principles that are, by their nature, individualistic, will have to give way to principles that reflect collectivist doctrines. In other words, the collectivist principle will, to a certain extent, always prevent the realization of a principle that is a reflection of the individualistic tradition. This is best seen in Spencer's social theory, which had departed from the position of extreme individualism and then slipped into collectivism due to the organicist approach, the then trend in the development of sociology. In his work *Social Statics*, Spencer says: "No one can be perfectly free till all are free; no one can be perfectly moral till all are moral; no one can be perfectly happy till all are happy" (Spencer, 1851 [1910]: 142). Therefore, even the combined ideological forms can easily turn into their closest collectivist ideological form, and with this in mind, we cannot say that they represent the middle in the true sense of the word or a virtue as per Aristotelian teaching.

There is a real pitfall that in the event of tension between certain ideas and principles, those who are collectivist in nature may prevail. Having in mind that the collectivist teachings opened the door to totalitarianism in the first half of the twentieth century, we could start from purely liberal positions and then mitigate them to the extent that their mitigation by various measures will not threaten individual freedom. A close examination of collectivist doctrines such as communism and fascism reveals a hostile closeness between them, whereas liberalism is equally opposed to both extremes. Therefore, it makes sense that the initial position be liberal, and that, to respect social circumstances, we proceed by softening liberalism in those spheres where its solutions may appear rigid and insensitive to social problems. Here, we may think that we are about to return to social liberalism, which has reconciled the extremes of classical liberalism. This is not the case, because the proposed scope of appropriate government activity implies correction of the positions of conservative liberalism only to the extent that there is no risk of individualism giving way to collectivism. In other words, we embrace Aristotle's teaching about the middle as a virtue, and with this in mind, the proposed approach can be depicted as sophisticated neoliberalism.

The starting position of this viewpoint requires acceptance of the fact that the present-day state, after a long period which has treated intervention as key in solving most social problems, can hardly go back to the former liberal positions. This is something that all supporters of liberalism must come to terms with. Otherwise, their theory could easily end up in some sort of liberal utopia, although they themselves are known for accusing socialism as having a tendency for utopianism. Nowadays, the minimal state in its original sense is a utopia. This is why we can single out those activities of the government which, although exceeding the protection of the person and property, do not endanger the freedom of individual in any way. In fact, hardly anyone could say that the state threatens someone's freedom by building roads or

when it takes care of health in the event of an epidemic. Accordingly, we should distinguish between those measures of state intervention that are in the interest of all citizens and those that are in the interest of a particular group of citizens. Within the latter type, we should distinguish between those measures that do not usurp the individual freedom of others in a harmful way and those that generate a serious violation of the individual freedom and the rights of others. For example, the defence and legal systems are equally available to all citizens, not just one person or a group of people. On the other hand, if for example the government invests funds to provide public services (roads and libraries, among others) not everyone may use those services (those who do not travel outside the place where they live or those who are illiterate or do not use library for whatever other reason). Then, their rights and freedoms will not be jeopardized by the government in a way that can happen following the government's decisions on measures in the field of social policy. There are also other measures of state intervention, such as those concerning progressive taxation and wealth redistribution, that are viewed as a form of arbitrary action by some groups.

Of course, the approach of sophisticated neoliberalism is not an ideal formula. A large number of citizens accustomed to the dominant role of the state will complain that even this approach is insensitive to a whole range of social problems (poverty, unemployment, etc.), and that conservative liberalism, whichever the form, cannot solve them. Moreover, even this softer variant cannot with certainty make a judgement for a series of government measures as to whether the violation of individual freedom in the original liberal sense is of such a nature that those measures may or may not be accepted. For example, when we talk about the education system, we could ask the question as to whether we should preserve financially unprofitable degree programmes (with more staff than students), so even the tiny number of those interested could still enrol, instead of going abroad. While it is impossible to draw a precise line of demarcation between these two types of government measures, we eventually end up with two completely opposite ideological positions. One is affirmative, which – regardless of financial losses – considers education (as well as health) a public good. The other one is negative, which insists on the logic of market law suggesting that if there is no interest for a specific profession in the market then the training for it should not even operate. Alongside this view, it would even be more profitable for the state to send (and finance) those students abroad instead of having to spend money on salaries, taxes, and fees for the academic and non-academic staff of study programmes that are unprofitable.

To conclude, finding a middle way between the opposing values, as pointed out in this paper, is not an easy task. Individualism and collectivism are difficult to reconcile. However, we should emphasize that some relatively successful attempts in that direction did exist, such as Macmillan's liberal variant of the welfare state, which was positioned "between liberal individualism, and communist and fascist collectivism" (Cvetičanin, 2008: 487). As explained, the "middle way" was actually a variant of conservative social liberalism, which found its embodiment in the rule of Winston Churchill and Charles de Gaulle, whose "post-ideological" mindset

succeeded in delineating “the interests of a wide area of the post-civic centre, in which their moderate conservatives were included but which also provided space for left-wing groups, with whom both figures had formed wartime coalitions” (Cvetičanin, 2008: 472). Consequently, Churchill introduced labourists into his government, while de Gaulle struck a deal with the socialists and communists; this combination of right-wing and left-wing elements would become the foundation of a new united Europe, which concretely took place only after their death (Cvetičanin, 2008: 473). In fact, at the time, the concrete political action as required by the then social circumstances, was incompatible with a logically consistent and perfectly shaped ideological framework. Thus, it was the combination of several different ideologies that paved the way to conditions permitting the coexistence of some heavily opposed values in real politics.

Even though social-liberal conservatives (as moderate collectivists) were aware of the necessity of reforms in the wider social spectrum, the original conservative values (order, authority, and tradition) represented the main reason for the occasional and sometimes unwilling turn towards the ideas of socialism. As pointed out by Robert Nisbet (2017: 72), Bismarck was not the creator of the modern welfare state (although this is regularly emphasized); Bismarck did not pass social laws because he truly believed in their fairness, but to weaken the socialists and bind the wider population to the order. On the other hand, Churchill’s occasional cooperation with socialists was not enough to extinguish the Burkean spirit of conservatism in him, so he used a pre-election rally to declare that “[t]here can be no doubt that socialism is inseparably interwoven with totalitarianism and the abject worship of the state” (cited in Nisbet, 2017: 73). Still, the conservative acceptance of some elements of the expanded role of the state as one of the variants of the middle way was a solid attempt to establish a compromise between freedom and equality, as well as other mutually opposing values in certain socio-historical circumstances.

Based on the above, determining the acceptable limits of state intervention in light of different ideological positions and preferences is extremely challenging. As it is impossible to eliminate differences between people, the issue of appropriate scope of government action will continue to be the subject of heated debates in social and political theory. Louis Althusser (1970) has provided us with a definition of human nature claiming that “man is an ideological animal”. This does not give us much hope that a generally accepted formula for the role of the state and the appropriate measure of government activity in different areas of social life will be found. However, we could all agree on one thing – the government should never be allowed to assume uncontrollable powers and start interfering to an unbearable degree in the autonomous sphere of individuals’ action. As such, they could endanger their freedom of choice by creating conditions that reopen doors to aggressive collectivist doctrines that do not know of individual freedom. If we are not sure whether the measures of state intervention can achieve their purpose without a greater threat to the individual sphere of action and individuals’ freedom of choice, then it is better to suspend further government interference in that direction.

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Da li *im* je zaista stalo do nas? O granicama državnog intervencionizma

Marko Dokić*, Vladimir Bakrač**, Branislav Radeljić***

*Pravni fakultet, University of Montenegro, Montenegro

**Filozofski fakultet, University of Montenegro, Montenegro

***Koledž humanističkih i društvenih nauka, United Arab Emirates University, UAE

Sažetak

U radu se ispituju granice državnog intervencionizma kroz odnos između slobode i jednakosti, vladavine prava i socijalne pravde, kao i dva suprotna koncepta kada je reč o obimu vladine akcije – konceptu minimalne države i konceptu paternalističke vlade. Shodno tome, analiziraju se određene dileme koje već dugo predstavljaju centralna pitanja moderne političke teorije, kao što su odnos slobode i jednakosti, odnos vladavine prava i socijalne pravde i dva krajnje suprotstavljena koncepta po pitanju opsega vladinog djelovanja – koncepta minimalne države i koncepta paternalističke države. Shodno tome, nastojaćemo da identifikujemo model koji bi mogao da prikaže do koje mere država može intervenisati u svetlu društveno korisnih ciljeva, ali bez ugrožavanja individualne slobode. Budući da ne možemo pronaći takav model unutar ekstremnih pozicija liberalizma i socijalizma, ovaj rad nastoji da ponudi zadovoljavajuće rešenje ublažavanjem nekih od isključivih ideoloških pozicija. U njemu se prihvata Aristotelovo učenje o sredini kao vrlini i predlaže jedna varijanta sofisticiranog neoliberalizma kao potencijalna alternativa *status-u quo*. Ipak, vladi nikada ne bi trebalo da bude dozvoljeno da ima tolika ovlašćenja da može stvoriti uslove za takve vidove kolektivizma koji ne prepoznaju individualnu slobodu.

Ključne reči: jednakost, sloboda, vladavina prava, socijalna pravda, državna intervencija

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markodokic@t-com.me

bvladimir@t-com.me

radeljic@uaeu.ac.ae