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COLIN BIRD ON LIBERTARIANISM: A CRITIQUE

ABSTRACT

In this article, I delve into Colin Bird's critical evaluation of libertarianism. Bird positions this strand within his broader framework of "liberal individualism," and he contends that libertarianism, as a prime exemplar of liberal individualism, is inherently self-contradictory because of the perceived tension between self-ownership and individual inviolability. Employing logical and comparative analyses, this research rigorously examines the accuracy of Bird's reconstruction and interpretation of libertarianism, while also assessing the validity of his assertion that libertarianism harbours internal contradictions. The findings suggest that Bird's argument does not hold primarily due to misinterpreting the core tenets of libertarianism.

Keywords: libertarianism, self-ownership, rights, utilitarianism, inviolability, redistribution

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1. INTRODUCTION

The aim of this article is to analyse the claims and arguments put forth by Colin Bird on libertarianism in his book *The Myth of Liberal Individualism*.¹ Bird provides a sophisticated critical account of the liberal individualism, of which, he contends, libertarianism is *the purest form* (p. 41).² Therefore, he considers the latter the primary illustration of his main thesis which posits that the entire theory under scrutiny is self-contradictory. This study examines Bird's reasoning concerning libertarianism by addressing the following research questions: (1) Is Bird's reconstruction and interpretation of libertarianism³ accurate? (2) Does Bird's argument that libertarianism contradicts itself by endorsing both self-ownership and individual inviolability hold? The thesis of this paper contends that Bird does not successfully demonstrate that libertarianism falls into a contradiction. I argue that his flawed position primarily arises from an erroneous reconstruction and misinterpretation of the fundamental premises and principles of this philosophical current. The study employs logical and comparative analyses. The former is used to critically assess the validity and coherence of Bird's reasoning, while the latter is applied to juxtapose his assertions regarding libertarianism with the core tenets of this political philosophy.

In the next section, I introduce Bird's two foundational conceptions, which he utilises to challenge the coherence of liberalism and libertarianism, and I present his resulting thesis concerning the latter. Sections 3 and 4 critically examine this author's reasoning regarding the application of these conceptions to libertarianism. The final section summarises the arguments against Bird's portrayal of libertarianism.

¹ C. Bird, *The Myth of Liberal Individualism*, Cambridge 1999.

² All references to Bird in this article are from his book *The Myth of Liberal Individualism* with page numbers provided in brackets within the main text.

³ It seems unfeasible to discuss the ongoing, complex debate on the conceptualisation of political libertarianism herein (for a recent discussion, see, e.g. M. Zwolinski, J. Tomasi, *The Individualists: Radicals, Reactionaries, and the Struggle for the Soul of Libertarianism*, Princeton–Oxford 2023). That said, addressing research question (1) requires adopting some notion of libertarianism as a point of reference. In this article, I follow the understanding adopted by Bird himself. Although he does not directly conceptualise libertarianism, his understanding of this philosophy can be identified based on the literature he references when addressing it. In this regard, he cites thinkers such as Robert Nozick (*Anarchy, State, and Utopia, a book that is arguably the paradigmatic and historically critical document of recent libertarianism* – p. 40), Jan Narveson, Loren Lomasky, Murray Rothbard, David Boaz, Tibor Machan, Charles Murray, Douglas Rasmussen and Douglas den Uyl, James Buchanan, and David Gauthier. From this list, we can clearly assume that Bird understands libertarianism as a free-market philosophy with self-ownership and strong property rights in external objects, including natural resources, as its crucial tenets – an understanding sometimes referred to as right-libertarianism. Importantly, Bird's understanding of libertarianism in his book does not encompass so called left-libertarianism (represented by, among others, Hillel Steiner, Michael Otsuka and Peter Vallentyne). My research question (2) aims to scrutinise whether Bird's reconstruction and interpretation of libertarianism align with the notion of this philosophy which he himself adopts (though indirectly, as mentioned) rather than assessing whether his conceptualisation fits other perspectives.

2. BIRD'S CONCEPTUAL FRAMEWORK AND THESIS

Let us first outline Bird's conceptual framework and his primary thesis. The author weaves his argument around the comparison of two conceptions he singles out, namely, *liberty and the private sphere* (LPS) and *liberty and individual inviolability* (LII). Bird claims that these conceptions jointly form the conception of an *inviolable private sphere*, which serves as the normative foundation of *liberal individualism* (see pp. 30-42). *According to this view—he contends—a society that acknowledges individuals' rights to act as they wish within their personal spheres of conduct automatically acknowledges their dignity and special value in so doing* (p. 35).

When applied to libertarianism, Bird specifies this framework as follows. First, LPS is represented by the self-ownership (SO) thesis, as posited by Bird (see pp. 33-34), who reconstructs it as follows: *individuals are to be regarded as the exclusive owners of their bodies, lives and personal assets and resources, and are free to make of them what they will* (p. 34). Second, LII is identified through the work of Robert Nozick. It draws inspiration from Immanuel Kant's categorical imperative and is connected with the category of side constraints (p. 141).⁴ Thus, LII is closely related to the "nonaggression principle" (also referred to as the "nonaggression axiom"), a characteristic idea within libertarianism⁵ although Bird does not explicitly mention these terms. In turn, SO and LII, or the nonaggression principle (NAP), give rise to the conception of "inviolable self-ownership rights," which is a specific instance of the "inviolable private sphere" encompassing liberal individualism in general. This normative framework is supposed to allow for the protection of both the free actions of individuals in their sovereign private spheres and the protection against being reduced to the role of means for the realisation of collective ends (pp. 145-147). However, Bird argues that, as with liberal individualism, so with its "purest form," libertarianism, the combination of the two foundational conceptions (SO and NAP) results in a contradiction, and that libertarianism can only be consistent if one of these conceptions is abandoned (pp. 140, 146-147).

Bird's position becomes clear when one explores his reasoning on SO and NAP. While he recognises that SO gives everyone the right to act in ways that do not infringe on the SO rights of others, he also believes these rights are not immune to violation (p. 148). According to him, considering these rights as inviolable would be just begging the question. Bird indirectly assumes their inviolability only in terms of an individual's power to pursue her values and plans (pp. 143, 148-150). He therefore argues that while paternalism and orthodox utilitarianism, which impose impersonal values on society, are absolutely prohibited in this light, the same cannot be said of minimal consequentialism or some end-state theories (pp. 152-153). As regards NAP, he notes that NAP-accommodating libertarianism not only conflicts with the strict utilitarian

⁴ See R. Nozick, *Anarchy, State, and Utopia*, Oxford–Cambridge 1999, pp. 28-35.

⁵ See M.N. Rothbard, *For a New Liberty: The Libertarian Manifesto*, Auburn 2006, pp. 27-30; R. Nozick, *Anarchy...*, pp. 33-35.

account of maximising general welfare but also with theories permitting the infringement on rights to eliminate future violations of the same kind, such as the theory called “rights utilitarianism” by Nozick (pp. 141-142).⁶ Hence, in Bird’s view, it is NAP, not SO, that serves as a bulwark against consequentialism and end-state ethics (pp. 147, 153, 165). However, he maintains that NAP severely limits the normative scope of SO by introducing intrapersonal duties (pp. 155-156, 165).

His argument can be represented in the following way:

- (1) Libertarianism assumes both SO and NAP.
- (2) SO protects LPS but allows violations of LII (through rights utilitarianism).
- (3) NAP protects LII, including by disallowing rights utilitarianism, but undermines LPS through the imposition of intrapersonal duties.

Therefore:

- (4) NAP and SO are in tension with each other.

Therefore:

- (5) Libertarianism faces internal contradictions.

3. SELF-OWNERSHIP VS UTILITARIANISM OF RIGHTS

In this section, I will address proposition (2) from the syllogism above. As mentioned, Bird claims SO does not preclude utilitarianism of rights. He argues that, at most, it implies an obligation to minimise violations of property rights derived from SO, as is the case in libertarianism, but does not provide an absolute prohibition against such interference. In his view, granting SO rights to every citizen does not constitute a normative shield against their infringement by or with the acquiescence of the government, if the government, or persons designated by it, knows that the infringement of one or more individuals’ rights will prevent more numerous infringements of this kind in the future. Actually, knowledge is not a necessary condition, as a minor interference is already to be allowed in a situation where it can serve as a precaution against a much greater violation of another or other people’s rights. For instance, confiscating a person’s firearm to prevent potential harm to others constitutes a minor SO violation justified by the intention to prevent a more severe rights violation (pp. 150-151). Additionally, Bird posits that the congruence of rights utilitarianism and SO implies a universal value: the creation of conditions for realising LPS. He argues that this value vindicates consequentialist political actions and provides guidance for public agents acting on behalf of citizens (p. 150).

This position, however, is completely wrong. First and foremost, Bird fails to successfully capture the libertarian notion of SO and libertarian property rights. When discussing the derivation of the latter from the former, he contends that *this says nothing about whether rights of ownership generally may legitimately be overridden or violated for the sake of other considerations, such as utility or the common good* (p. 148). However,

⁶ Cf. Ibid., pp. 28ff.

as Łukasz Dominiak and Igor Wysocki clarify: *To have a genuine right (particularly, a genuine property right with which libertarianism is concerned) basically means that its violation is impermissible... To say that it is permissible for the state to violate individual property rights to avoid some greater evil is to say that individuals do not have these rights. What they are capable of having then are either purely nominal rights (which in fact are no rights at all) or at best some non-property, non-overtopping rights.*⁷

The nature and implications of the libertarian SO are comprehensively explained by Peter Vallentyne: *This full private ownership of a person or thing includes (1) full control rights over (to grant or deny permission for) the use of the person or thing, (2) a full immunity to the non-consensual loss of any of the rights of ownership as long as one uses no objects over which others have non-waived claim-rights, (3) full power to transfer these rights to others (by sale, rental, gift, or loan), and (4) a full right to compensation if someone violates these rights. It is important to note that ownership can vary in strength depending on how strong the corresponding bundle of rights is. Libertarianism in the strict sense is committed to full self-ownership, which is a maximally strong bundle of ownership rights.*⁸

As mentioned, Bird claims that considering libertarian property rights as inviolable begs the question. By doing so, however, he avoids delving into the justification of libertarian SO and property rights. Perhaps it is true that the libertarian thesis of SO finally begs the question, but Bird does not offer any argument supporting such a claim. Furthermore, this constitutes a methodological fallacy, as Bird's research problem pertains to what is known as an internal critique, which necessitates temporarily adopting the assumptions of the strand under scrutiny for the sake of argument, if not for anything else.

⁷ Ł. Dominiak, I. Wysocki, "The Anarcho-Capitalist Case Against the State as a Challenge to the Minarchist Libertarians," *Roczniki Filozoficzne*, vol. 70, no. 2 (2022), p. 59.

⁸ P. Vallentyne, "Libertarisme, propriété de soi et homicide consensuel," *Revue Philosophique de Louvain*, vol. 101, no. 1 (2003), p. 7. Vallentyne represents left-libertarianism, characterized by its rejection of full property rights to natural resources. Nevertheless, the quotation aptly encapsulates the concept of full self-ownership as understood in "libertarianism in the strict sense." As an anonymous reviewer pointed out, it should be noted that there are varying positions among libertarians regarding the absoluteness of rights. I acknowledge that this matter remains open for discussion. An intriguing proposition that provides additional insights into this debate is presented in the recent paper by Dominiak and Wysocki. In this work, the authors, utilizing a modified typology of moral prohibitions proposed by Matthew H. Kramer, argue (in contrast to libertarians such as Rothbard and Walter Block) that libertarian rights are *weakly* absolute rather than *strongly* absolute. According to Dominiak and Wysocki, a libertarian right might be overtopped in certain circumstances; however, it cannot be simply overridden, as that would render it only *prima facie* right. The distinction between overtopping and overriding lies in the fact that when the right is overtopped, the right-holder is not considered as losing her right and must receive compensation for its violation. Conversely, when the right is overridden, it simply ceases to exist, making compensation not binding. In any case, Bird's account not only remains silent on compensation but also permits systematic infringement upon rights (utilitarianism of rights), rather than only in some extraordinary instances, such as the danger to someone's life. Therefore, the question arises whether in Bird's view self-ownership remains *sensu stricto* right at all. See Ł. Dominiak, I. Wysocki, "Libertarianism, Defense of Property, and Absolute Rights," *Analiza i Egzystencja*, vol. 61 (2023), pp. 5-26; M.H. Kramer, *Torture and Moral Integrity*, Oxford 2004, pp. 2-11.

Bird's stance on values is also flawed. First of all, values do not stem from rights. Therefore, *a fortiori*, the value of the existence of conditions for the realisation of one's values and goals does not derive from SO. Moreover, Bird's presupposition that a public agent's interventions in SO do not disrupt peaceful projects is mistaken, as evidenced by the example of gun confiscation. A libertarian might argue that an individual's project could involve collecting guns and ammunition⁹, potentially leading to the creation of a commercial museum. And what if some people will never feel safe unless they have a firearm in their home, which might be a consequence of different life experiences or cultural factors? What Bird considers a minor invasion could be perceived as a major violation by these people. Seen in this light, the SO rights would have little to do with LPS, which is intended to secure one's pursuit of personal goals and values. Most notably, as Murray Rothbard argued: *no one has the right to coerce anyone not himself directly engaged in an overt act of aggression against rights. Any loosening of this criterion, to included coercion against remote 'risks,' is to sanction impermissible aggression against the rights of others.*¹⁰

These comments highlight another issue with Bird's argument: the challenge of predicting the future. It is impossible to know with certainty what an agent will do, as individuals continuously make choices based on their predictions, including their expectations of others' actions. While individuals have the right to adjust their actions based on their predictions and assessments of uncertainty and risk, they do not have the right to limit others' rights solely on the supposition that an individual with a firearm will violate someone else's rights. This postulate is untenable in the context of SO.

Elsewhere, Bird argues that *there are cases in which merely supplying non-interference to individuals will not be enough to guarantee to self-owners the opportunity to pursue their self-chosen project* (p. 151). Based on this perspective, he justifies the government in violating the rights of individuals through levying taxes on them for the redistributive purposes so that the poor, too, can pursue their plans and values (pp. 151-153). These sorts of policies are typically derived not from libertarianism, but from high liberalism, a socially oriented liberalism represented most notably by John Rawls.¹¹ Bird is fully aware that such rights violations are unacceptable on libertarian grounds, yet, let us repeat, he believes that they are impermissible not by virtue of SO itself, but only when complemented by NAP. He anticipates some of the counter-argumentation that can be made against his position: *It is tempting to object that any 'consequentialist' tendencies which emerge in this context cannot be attributed to the thesis of self-ownership itself but are, rather, an artifact of the underlying design of the thought-experiment*¹², *which is built around the assumption of an agency that is responsible for 'society as a whole'* (p. 153). As he aptly points out, it would involve adopting a non-individualist perspective while overtly rejecting it. However, he argues that, despite this, SO is not distorted at all:

⁹ Cf. M. Huemer, "Is There a Right to Own a Gun?," *Social Theory and Practice*, vol. 29, no. 2 (2003), pp. 297-324.

¹⁰ M.N. Rothbard, *For a New Liberty...*, p. 239.

¹¹ See J. Tomasi, *Free Market Fairness*, Princeton–Oxford 2012, chap. 2.

¹² This concerns the attempt to justify the utilitarianism of rights.

There is nothing intrinsic to the net of ideas that constitute the idea of universal comprehensive self-ownership that rules out this kind of minimal consequentialism, and so there is nothing intrinsic to those ideas which makes self-ownership rights inviolable (p. 153).

I have already contested the last part of this position, mainly by referring to the meaning of the libertarian notion of SO. Thus, the first part of the quoted statement deserves more attention although it must be borne in mind that the anticipation made by Bird is perfunctory. He merely indicates the objections that can be raised against his position and informs us of his disagreement with them. More importantly, he makes the error of framing his critique of libertarianism within the context of a pre-established political authority, headed by a political power with an imperative to act for the good of the whole. Another Bird's error is maintaining that this is not necessarily contradictory to the values held by individuals (p. 154). This is an unfounded assumption leading to an unsupported conclusion. From a libertarian perspective, one can reasonably assume only what stems from SO, which, as a reminder, Bird interprets as the right of individuals to pursue their own goals and conceptions of the good. Rather, the starting point could be anarchy, as proposed in Nozick's state-of-nature hypothesis. By commencing his discussion with pre-established political authority, Bird avoids substantial problems, which is not to say, however, that they do not exist. For example, within libertarianism, it must be assumed that a self-owner has the complete right to lead a life, even if as a misanthrope, and it is entirely possible that such individuals may fall under the jurisdiction of the government. Then it goes without saying that the teleological imperative to act for the common good would be at odds with the values of the misanthrope. As an adherent of political atomism, she would be succumbed to a broader purpose that he does not endorse. As suggested by Bird, this could potentially involve the coercive taxation of such an individual to transfer some of her resources to those less affluent, enabling them to pursue their own visions of the good and their own goals. This situation would be in direct opposition to the misanthrope's goals and values, even if she were rich enough to be able to continue pursuing his goals after taxation. The crucial point for rejecting Bird's approach is that such an individual would find herself in a situation where taxation conflicts with his professed values, making it difficult to continue living in accordance with these values. In this case, these values would be inherently negative, defined by a desire to sever ties with others. Within this person's worldview, we can not only recognise an immanent hindrance to the pursuit of one's own goal and conception of the good, but even a disrespect for this person because of his subjection to the coercive nature of political power, with the state official in the role of a tax collector.¹³

We could conclude that this is not a significant issue because there are very few individuals of this loner type, and an exception can be made to leave them alone. However, the question arises as to whether making an exception for the misanthrope would salvage Bird's argument. Considering everything discussed above about the misanthrope's situation, she could indeed avoid taxation for redistributive purposes and be allowed to pursue her own values. Yet, this solution is merely superficial. In fact, it is biased and

¹³ Cf. M.N. Rothbard, *The Ethics...*, pp. 203-205.

thus unjust (even if only on libertarian premises), as the advocate of political atomism would, this time without contributing anything of their own, find himself a more favourable position than other individuals whose values and goals align with the teleological pattern of state activity. To simply exempt the misanthrope would be unauthorised and arbitrary when considering neutrality towards individual conceptions of the good. What wrongdoing has the altruist or moral ignoramus committed to justify their taxation while the misanthrope remains immune from taxation?

Determining which citizens are eligible for taxation based on their particular values would necessitate a form of surveillance to confirm whether the professed conceptions of the good align with citizens' actual practices. Therefore, it is conceivable that lifestyles and beliefs conducive to tax exemption would frequently be declared.¹⁴ Added to this, recognising that the state need verify these declarations, as otherwise tax revenues would be rather limited and insufficient, some individuals could intentionally adopt a misanthropic stance to evade taxation. This could result in an artificial atomisation of society and ultimately undermine the state's efficiency.

Bird (p. 154) argues that a public agent who infringes on the rights of self-owner X does not assess the value that he is obstructing from realisation, nor does he compare it with the values of those whose SO is secured by resources forcibly taken from X. Simply put, Bird argues that the values held by the person bearing the cost of redistributive policy are no inferior to those of the beneficiary. So why make any "shift" in income? The argument simply hinges on the claim that, *ceteris paribus*, it is better for more self-owners to have the opportunity to pursue their own values, whatever they are (pp. 154-155). Bird claims that such interferences with self-owners' rights by a public agent do not reveal the agent's bias (see more on pp. 154-155), however, it appears that, in light of the argument about the misanthrope presented earlier, this standpoint may be considered unconvincing.

Concluding this section, it is noteworthy that, when discussing the libertarian SO, Bird draws upon the works of John Stuart Mill and Loren Lomasky, but surprisingly, he does not reference figures such as John Locke, considered the progenitor of the libertarian SO, or prominent modern libertarians like Rothbard, who consistently applied this concept. He briefly touches upon Nozick's perspective on the political implications of SO as an exception (see pp. 163-164). This raises concerns about the accuracy of Bird's conceptualisation of the libertarian SO. The same issue extends to his framing of libertarianism itself, for it is erroneous to assume that libertarianism invariably entails the presence of a state, especially one that is not merely a "night watchman" but an active maximiser of the common good. In reality, libertarians recognise a distinction between anarcho-capitalism and minarchism.¹⁵

¹⁴ Considering the following passage from Bird, it appears that this interpretation is not exaggerated. As he claims: *In the Lomasky/Mill view (aggregative and asymmetrical), the liberal public agent oversees the community as it were from the outside: he considers the interests of each individual separately, and justifies a view about the normative stringency of individuals' claims and rights on that basis* (p. 162).

¹⁵ See R.T. Long, T.R. Machan (eds), *Anarchism/Minarchism: Is a Government Part of a Free Country?*, Ashgate 2008.

4. NONAGGRESSION PRINCIPLE VS INTRAPERSONAL NORMS

Let us now turn to an analysis of the second component of “liberal individualism,” that is, LLI, which is manifested by NAP in libertarianism. According to Bird, the inviolability of individual rights in libertarian philosophy derives from Kantianism or neo-Kantianism (p. 155). He portrays the Kantian principle in this way: *all agents have duties to respect some supreme and intrinsically valuable feature F of agents* (p. 156). Bird presents this principle as intersubjective, but also – referring to Locke and Kant – intrapersonal, meaning that the duty in question extends not only to interactions with others but also to one’s own person or a particular feature *F*, a perspective Birds finds logically justifiable (pp. 155-156, 165). This approach underpins his argument that the Kantian principle, and thus also NAP, and the libertarian postulate of full SO are mutually exclusive. The argument proceeds as follows: *[T]he burden of the thesis of comprehensive self-ownership was to permit individuals to veto any alleged responsibilities of this self-regarding kind. So, if this argument is to combine a commitment to self-ownership with one of the thesis of individual inviolability the argument must include some mechanism whereby individuals may make an exception for themselves merely by invoking their personal inclinations and values. But can this be done in a way that does not undermine the unconditional nature of our duties to F which the Kantian strategy requires?* (p. 156)

He answers the questions as follows: *This seems impossible¹⁶, because... the basis for the imperative for that rights ought to be inviolably respected is the claim that violations of rights would violate a more general duty to respect F. The thesis of self-ownership would require, however, that (where no other individuals are affected) individuals can exempt themselves from this more general requirement by invoking their own inclinations and personal values. But the effect of this is to make the general duty to respect F optional, or at any rate to subordinate it to whatever values individuals contrive to endorse or pursue. So... a public agent who accepts the thesis of self-ownership must accept that, in principle, what is of value to individuals (that is, whatever self-owners want to do with their property) trumps the independent value of any relevant F. But if what is of value to agents can so defeat the putatively independent value of F, then an appeal to the latter becomes too weak to rule out the sorts of violations allowed in the thought-experiment above¹⁷* (pp. 156-157).

Thus, according to Bird’s argument, to maintain the inviolability of feature *F*, a public agent would need to ensure that citizens restrict their actions, even in relation to themselves, to those that are permissible. This would, however, weaken SO. But why is the invocation of *F* against redistributive infringements “too weak” in the discussed example? Bird draws this conclusion on the basis of reasoning that can be reduced to the

¹⁶ Nevertheless, at one point, Bird reveals that he is not entirely convinced that a purely interpersonal application of LII is impossible (see p. 162).

¹⁷ Again, this is pertinent to Bird’s attempt to vindicate the utilitarianism of rights which was analysed in the previous section.

following sequence of assertions. A self-owner has the right to allow a public agent to violate that person's *F*, so that the agent acts to propagate the SO rights. This would be permissible because, having the full SO rights, the individual would not be constrained by the duty to respect the value *F* in his person, but would himself ultimately define what is his own value in relation to himself.¹⁸ Thus, in this case, he would consider the violation of his *F* to be of value to him. As far as libertarianism is concerned, Bird aptly assumes here the primacy of SO over inviolability in the individual case, but this leads him to uphold the earlier thesis of the legitimacy of rights utilitarianism. Therefore, from recognising that the subjective values of individuals outweigh the duty to respect their *F* (by them and by other individuals), this author moves on to granting an official a priori right (already without obtaining consent from the individual right-bearers) to violate the SO of some individuals for the sake of the SO of other individuals, in accordance with the utilitarianism of rights (see pp. 157-158).

Overall, Bird's argument is quasi-holistic, collectivist and it tends to downplay the differences between separate individuals. It is by no means an objection to his philosophical positions, e.g. in ontology, ethics or political philosophy. Rather, it highlights a methodological shortcoming. Bird seeks to demonstrate the mutually exclusive nature of two conceptions within a specific strand in political philosophy. This entails engaging in an internal critique, which, as already mentioned in Section 3, requires adopting the assumptions of the scrutinised position, even if only for the sake of argument. Hence, implicitly assuming a quasi-holistic approach within the context of an internal critique of individualistic currents is a methodological fallacy leading to flawed results, and Bird's work is no exception.

Specifically, he is guilty of a non sequitur due to moving from (1) an individual case in which a person intentionally and legitimately decides to act in violation of her *F* (which might imply that the public agent is exempted from the obligation to respect that person's *F*), to (2) granting the public agent a priori permission to violate *F* of all citizens. This move is based on a logical fallacy of extended analogy.

As far as libertarianism goes, a criterion for distinguishing between rightful and wrongful actions is voluntariness¹⁹, meaning that there is no rights violation if an individual permits someone to ignore her bodily rights. In addition, such an exemption only applies within the quantitative (in terms of the number of persons exempted) and qualitative (in terms of how far the exemption allows to infringe on inviolability) scope which results from the consents given by individual rights holders. To wit, (1) is based on a voluntary relation, while (2) is not. Thus, Bird misuses (1), where one allows someone to ignore one's bodily rights, to vindicate (2), which implies aggression,

¹⁸ In his concise review of Bird's book, George Sher argues that deriving inviolability from a specific human feature is distinct from deriving inviolability from the *value* attached to that feature. Sher contends that recognising the value in that feature implies maximisation rather than inviolability. G. Sher, [Review of *The Myth of Liberal Individualism*, by C. Bird] *Mind*, vol. 110, no. 437 (2001). I thank an anonymous reviewer for bringing this publication to my attention.

¹⁹ See B. Christmas, "Force and Coercion," in M. Zwolinski, B. Ferguson (eds), *The Routledge Companion to Libertarianism*, London–New York 2022, p. 153.

an initiation of a physical force.²⁰ In libertarianism, the primacy of SO over “inviolability of *F*” (or NAP, which appears to resemble LII within this philosophy) is only recognised within the context of an individual’s sovereign jurisdiction over herself. It is, therefore, nobody but a particular individual who is allowed to waive the obligation to respect her inviolability. Admittedly, Bird does not present the said conclusion explicitly, as his focus is on his supposition that the infringement of the SO rights of some serves to increase these rights in a greater number of self-owners or to safeguard against the infringement of their rights in the future (utilitarianism of rights), but his reasoning ultimately boils down to precisely the above conclusion which is unacceptable on libertarian premises.

Another crucial argument for rejecting Bird’s reasoning is that in libertarianism, the Kantian and Lockean influences do not include intrapersonal legal duties. Bird evokes this argument which was called by G.A. Cohen the “enforcement objection” (pp. 166-167), however the former author fails to see this fundamental issue clearly. He suggests that the inspiration of the Kantian rule, as he presents it, would only be valid if it were complete, i.e. extending the said duty also to oneself. Therefore, in his analysis of libertarianism, he relies on the complete version of LII, which implies misconceptions and the thesis about the inherent contradiction between the SO and LII/NAP.

Nonetheless, Bird attempts to challenge the enforcement objection argument. To do so, he uses a three-stage argumentation. I will not delve into his first argument (see pp. 167-168), as it does not relate to enforcement, but rather aims to support the claim that a libertarian state should be allowed to engage in public value-judging.

Secondly, Bird asserts that the permissibility of enforcing an individual’s duties to himself should not be dismissed a priori. Anyway, instead of libertarianism, he analyses Kantianism and indicates that *the categorical imperative directly implies that one always act in ways which allow all rational agents (including oneself) to exercise that capacity [for moral autonomy]* (p. 169). Notwithstanding, Bird points out that Kant’s claims about the state preventing activities like prostitution, suicide, and voluntary slavery are problematic given the latter’s voluntarist and anti-paternalist foundations for his legal doctrine (pp. 171-172). On the meaningfulness of the enforcement objection based on the voluntarist premises in Kant, Bird claims: *This might make sense if, for Kant, the category of external lawgiving is exhausted by that of legal justice. But in fact, Kant assumes that the doctrine of Right (which is defined as the domain of possible external lawgiving) is not so restricted, for he acknowledges a whole range of non-statutory duties of Right. The Kantian doctrine of Right does not say that only illegal or unjust hindrances of freedom justify coercive enforcement by an outsider. Nor does it say that coercive interventions that hinder or prevent violations of the doctrine of Right are illegitimate, or even that they are themselves unjust*²¹ (p. 172).

²⁰ See M.N. Rothbard, *For a New Liberty...*, p. 27.

²¹ Without delving deeply into Kant’s philosophy, one might seriously question whether Bird’s position (except for the last sentence) aligns with the definition of the “doctrine of the Law” he previously cited. As he states: *Kant’s answer is that only those forms of coercion which allow each individual to exercise his own capacity for autonomy are allowed. Such legitimate forms of coercion constitute (what Kant calls)*

Bird goes on to refer to Kant's statement that someone who violates duties to himself commits "crimes against humanity." He argues it is reasonable to suppose that Kant considered this offense as even more serious than transgressions against the state (that is, presumably against its laws) (p. 172). *In any case—Bird concludes—the fact that such actions are 'not unjust' need not preclude direct political intervention on other grounds* (p. 173). Hence the conclusion that the Kantian rule limits the fullness of SO, and that there are certain actions one is obligated to refrain from doing to oneself (p. 176). All in all, when confronted with this kind of argumentation, whether it is right or wrong, an investigator of libertarianism should cast it aside, as it pertains not to libertarianism, but only to Kantianism.

Within his third counter-argument to the "enforcement objection," the philosopher makes the claim that disposing of someone else's property, even against their will, does not have to violate LII. Only such infringements, which hinder *an inviolable human capacity* (p. 177), constitute unjust violations. On this basis, he argues that it is difficult to justify libertarian property rights and to object to progressive taxation of the affluent as a violation of their fundamental rights. According to Bird, the Kantian strategy allows us to object to progressive taxation only by demonstrating *that in every case the taxation of the wealthy necessarily prevents them from exercising their inviolable human capacities* (p. 177).

Such reasoning must be categorically rejected because the Kantian strategy, as described by Bird, does not imply that individuals can be subjected to anything as long as their inviolable feature is not violated or as long as they can use it in some way. We need to highlight that the inviolability of *F* concerns only the intrapersonal aspect. The intersubjective dimension, on the other hand, is pertinent not to the inviolability of a feature, but to the inviolability of an individual. This is why it is referred to as *liberty and individual inviolability* (LII), rather than *liberty and the inviolability of F*. In the intersubjective dimension, this conception is thus related to individual rights and NAP. Although, following Bird's reasoning, this is because all human beings possess feature *F*, it is important to recognise that because of the organic unity of a person, this feature cannot be separated from its bearer. Drawing on Aristotelian metaphysics, it should be noted that a trait is an accident of a substance and, as such, is not self-contained; it depends on the existence of a human being for its own existence. Furthermore, Bird himself acknowledges that it is LII that protects against the utilitarianism of rights derived from SO, or in other words, against redistribution. However, at this point, he seems to vehemently deny this claim.

To counter Bird's critique, it is perhaps crucial to emphasise that the conception of LII, particularly when applied to libertarianism, concerns the inviolability of individual rights rather than the imposition of holistically defined duties. This stands in contrast to Bird's argument, as previously quoted, that *the basis for the imperative that rights*

the 'Doctrine of Right,' which he defines as 'the sum of those laws for which an external lawgiving is possible' (p. 169). How, then, can we reconcile what Bird states, namely, that *[t]he Kantian doctrine of Right does not say that only illegal or unjust hindrances of freedom justify coercive enforcement by an outsider* (p. 172)?

should be inviolably respected is the claim that violations of rights would violate a more general duty to respect F.

Duties correlative with the rights of others pertain to individuals as separate entities, rather than to a feature shared by all. Furthermore, rights only apply intersubjectively. Writes Bird: *[I]t is no objection to try to point out that there is something odd about the idea that individuals might be in a position to violate their own rights. This is of course true, but the Kantian strategy (i)²² does not involve the counterintuitive claim that it is possible for individuals to violate their own rights. All of that is necessary is that the theory state that individuals have certain responsibilities to respect...* (pp. 159-160).

Of course, according to Bird, the existence of such duties abolishes the full SO rights (p. 158). This explanation should be firmly rejected for several reasons. Shifting the focus from recognising the primary importance of rights to giving priority to duties is methodologically mistaken. Moreover, it contradicts the fundamental principles of libertarianism. Bird claims that the Kantian strategy brings about the recognition that *the public principle, 'respect the rights of individuals at all costs,' entails an analogous private principle – respect the value of (some special aspect of) your own person at all costs* (p. 158).²³ However, this analogical reasoning is flawed.

To demonstrate this is the case, let us consider the following reasoning. If an analogy can be made between the public sphere and the private sphere, it can also be made in the reverse direction, that is, from the public to the private. Thus, if one were to make this type of analogy with respect to the SO thesis, the result would be a surprising “analogy” such as: “the private rule: ‘an individual has rights derived from SO which allow her even to commit suicide’ entails an analogous public rule: ‘an individual has a right to kill.’” This would be the same fallacious *per analogiam* as in the previous case. This second “analogy,” however, is not presented by Bird because, regarding the SO thesis, his reasoning is correct. For when it comes to granting an individual the SO rights, the correct analogy consists of granting the same rights to other agents as well, so that each is allowed to kill himself, but not others (see p. 159). Thus, the analogy to “respect the rights of individuals *at all costs*” would be: “while others ought to respect the rights of you and others *at all costs*.” The “private” analogy to “respect the rights of individuals *at all costs*,” could be either as the one above (“while others ought to respect the rights of you and others *at all costs*”), or “respect your rights *at all costs*.” It seems that Bird prefers the latter understanding, assuming that in the maxim “respect the rights of individuals *at all costs*,” the term “individuals” also includes the addressee of this imperative. In effect, it would not be a matter of analogy but an argumentum a fortiori, stating that since the imperative to respect applies to individuals, it also applies, in an intrapersonal sense, to the addressee as an individual. Nevertheless, as the author himself admits in the words quoted above, it is impossible to respect one’s right, and therefore, such an argument is

²² Its central claim is *that the fundamental public consideration is the independent value of the individual end of that particular characteristics or features of agents which causes them to have this special value in status* (p. 158).

²³ This quote is from the page immediately preceding the one containing the earlier quote about duties. This juxtaposition further validates our evaluation of the aforementioned Bird’s endeavor.

invalid. The one presented in the previous paragraph remains as the only rational one. Consider that transforming the notion of right into the notion of duty towards some feature enables arriving at the most general, holistic findings, including both intra- and interpersonal imperatives. In Bird's reasoning, once more, there is no room for a division between what defines the self and what lies beyond the self. His perspective does not endorse the notion of right as having solely an intersubjective meaning.

5. CONCLUSIONS

In conclusion, the author of *The Myth of Liberal Individualism* identifies the conflict between two conceptions: LPS/SO and LII/NAP, because he fails to accurately reconstruct and interpret them within libertarianism. Both SO and NAP hold normative significance only in a supra-individual setting, i.e. when there is a need to regulate interactions between individuals. It is on such an intersubjective basis that libertarianism is built.²⁴ While it is possible to discuss duties from a teleological or metaphysical perspective even in complete isolation, within libertarian political philosophy, duties and rights are primarily framed within the intersubjective domain. These concepts gain significance when more than one person is involved. Libertarianism allows self-owners to act as they wish toward themselves as long as it does not violate the rights of others. This is also the sense of NAP.

SO rights provide a sufficient ground to advocate both freedom of action in the private sphere and the prohibition of infringing upon these rights. Thus, SO itself already contains NAP. It is a cardinal error to see SO as a value to be maximised, rather than as a fact to be respected. Therefore, Bird's depiction of the public agent's dilemma within libertarianism should be considered misleading and devoid of substance. He argues that, equipped with both conceptions of 'liberal individualism,' the representative of the government does not know whether to choose SO or inviolability (p. 158). Opting for the former would align with what Bird terms *an impartial utilitarian spectator* (p. 162). In the latter case, the authority's structure would resemble the quasi-totalitarian consistory under Jan Calvin in Geneva. Furthermore, Bird's dilemma, as he presents it, relies on a pre-established political authority, where a public agent has the power to redistribute income. In libertarianism, there is no such assumption which is why the practical problems identified by Bird do not apply to genuine libertarian political philosophy.

Bird's undertaking appears to be an attempt to demonstrate that libertarianism cannot be a combination of Kantianism and Mill's philosophy. However, libertarianism does not need to presuppose that it is a hybrid of other philosophical doctrines. It draws on the philosophical tradition of the West, especially the Enlightenment, but it is an original position in its own right.

We need, therefore, conclude that Bird's attempts at criticism of libertarianism turn out to be entirely erroneous.

²⁴ See M.N. Rothbard, *The Ethics...*

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