

CHARLES UNIVERSITY IN PRAGUE
FACULTY OF SOCIAL SCIENCES
Institute of economic studies

Bachelor Thesis

2012

Ondřej Kolínský

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Paradoxes of Liberal Liberty

Revision of the Classical Assumptions of Freedom

Bachelor Thesis

Prague 2012

Author: Ondřej Kolínský

Supervisor: Prof. Ing. Lubomír Mlčoch, CSc.

Academic year: 2011/2012

Bibliographic Evidence Card

KOLÍNSKÝ, Ondřej. *Paradoxes of Liberal Liberty*. Prague, 2012. 34 p. Bachelor thesis (Bc.) Charles University in Prague, Faculty of Social Sciences, Institute of Economic Studies. Supervisor Prof. Ing. Lubomír Mlčoch, CSc.

Abstract

Current criticism of liberalism is usually based on ad hoc economic and social arguments. In this bachelor thesis, on the contrary, we seek to verify to what extent the very core of the classical liberal doctrine is consistent with the findings of modern economics. In the first part, we examine the writings of the fathers of economic liberalism; Jeremy Bentham, John Stuart Mill and Friedrich August von Hayek. On their grounds, we describe and specify the type of liberty this paper is concerned with. Also, we show what beliefs these philosophers held regarding the question of human rationality. In the second part, we provide some philosophical background to the question of freedom and explain how it is interconnected with rationality. Finally, in the third part, we draw some empirical findings from behavioral economics, which aims at explaining the disparity between preferences and actual decisions of people. By contrasting these discoveries with the original liberal ideas, we are able to identify specific points, where the classical theorists incline to misleading beliefs. The aim of this paper is to assess how grave the implications of these errors are and how they could be addressed within the framework of liberalism. We also estimate their impact on the market interaction and examine possible policy responses.

Keywords

Assumptions of liberalism, rationality, negative liberty, manipulation, behavioral economics, Jeremy Betham, John Stuart Mill, Friedrich Hayek, Isaiah Berlin

Abstrakt

Současná kritika liberalismu je obvykle založena na ad hoc ekonomických a sociálních argumentech. V této bakalářské práci se naopak snažíme ověřit, do jaké míry je vlastní jádro klasické liberální doktríny konzistentní se zjištěními moderní ekonomie. V první části zkoumáme díla otců ekonomického liberalismu; Jeremyho Benthama, Johna Stuarta Milla a Friedricha Augusta von Hayeka. Na jejich základě vymezujeme typ svobody, kterým se práce zabývá, a popisujeme představy těchto myslitelů o lidské racionalitě. Ve druhé části představujeme svobodu v širším filosofickém kontextu a poukazujeme na její propojení s racionalitou. Ve třetí části potom čerpáme empirická zjištění z behaviorální ekonomie, která se snaží o vysvětlení rozdílu mezi preferencemi a chováním. Konfrontací těchto objevů s původními liberálními koncepty nacházíme konkrétní místa, kde klasičtí teoretici měli o lidské racionalitě zavádějící představy. Cílem této práce je stanovit, jak závažné důsledky tyto chyby mají a jak mohou být v rámci liberalismu odstraněny. Závěrem se snažíme odhadnout jejich dopad na fungování trhu a možné politické nástroje vedoucí k jejich nápravě.

Klíčová slova

Předpoklady liberalismu, racionalita, negativní svoboda, manipulace, behaviorální ekonomie, Jeremy Bentham, John Stuart Mill, Friedrich Hayek, Isaiah Berlin

Length: 67.958 Characters

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Prague, May 18 2012

Acknowledgements

I would like to express my gratitude to Prof. Ing. Lubomír Mlčoch, CSc. for many useful hints and for the inspiration to study alternative currents of economic theory.

I would also like to thank Prof. PhDr. Stanislav Sousedík, CSc. for a helpful consultation regarding Immanuel Kant.

Institute of Economic Studies

Project of Bachelor Thesis

Current criticism of liberalism is usually based on ad hoc economic and social arguments. In this bachelor thesis, on the contrary, we seek to verify to what extent the very core of the classical liberal doctrine is consistent with the findings of modern behavioural economics and other critical branches. In the first part, we examine the writings of liberal political economists, especially those of Bentham, Mill and Hayek, and on their grounds define the type of liberty the paper is aimed at. To illustrate the contrast with other schools we present some different views on the issue of liberty as well. In the second part, we confront this theory with current discoveries of behavioural economics, which examines the factors influencing the choice, and modern modifications of Weber's model of iron cage, where the free market equilibrium limits the choices of each subject involved. Finally, we suggest practical political application of our findings and fields for further research.

Projekt Bakalářské Práce

Současná kritika liberalismu je obvykle postavena na ad hoc ekonomických a společenských argumentech. V této bakalářské práci se ale snažíme ověřit, do jaké míry je samotné jádro klasické liberální doktríny konsistentní se zjištěními moderní behaviorální ekonomie a dalších kritických směrů. V první části rozebíráme díla liberálních politických ekonomů, zejména Benthama, Milla a Hayeka, a na jejich základě definujeme typ svobody, kterým se práce zabývá. Pro ilustraci kontrastu s ostatními školami uvádíme i jiné pohledy na problém svobody. Ve druhé části pak tuto teorii konfrontujeme se současnými poznatky behaviorální ekonomie, která zkoumá faktory ovlivňující volbu, a moderními modifikacemi Weberova modelu železné klece, kde rovnováha na volném trhu omezuje volby všech aktérů. V závěru práce nastiňujeme praktickou politickou aplikaci našich zjištění a možnosti pro další výzkum.

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Project submitted on June 7 2011

Contents

1. INTRODUCTION	1
1.1 Motivation.....	1
1.2 Aims.....	2
1.3 Methodology.....	3
2. JEREMY BENTHAM	5
2.1 The First Letter	6
2.2 The Second Letter.....	7
2.3 The Third Letter	7
2.4 The Fifth Letter	8
3. JOHN STUART MILL	9
3.1 Benefits of Individuality.....	10
3.2 Protection of Values.....	11
3.3 Implementation of the Principle.....	12
4. FRIEDRICH AUGUST VON HAYEK.....	14
4.1 Historical Context	14
4.2 Evolution and Progress.....	15
4.3 Individual Capacities	16
5. CATEGORIES OF LIBERTY	18
5.1 Two Concepts of Liberty.....	18
5.1.1 The Negative Notion or Liberty from.....	19
5.1.2 The Positive Notion or Liberty to.....	19
5.2 The Genesis of Liberty.....	20
5.2.1 Breaking the Automatic Cycle	20
5.2.2 Implications fro Liberalism	22
6. OBJECTIONS	23
6.1 Basic Biases	23
6.2 Two Behavioral Currents	24
6.3 Paternalism and Manipulation	26
6.4 Flatly Applicable Rationality of Jeremy Bentham	27
6.5 Advisory Institutes of John Stuart Mill.....	28
6.6 Outsourced Rationality of Friedrich Hayek	29
6.7 Systemic Threat to the Idea of Negative Liberty.....	30
7. CONCLUDING REMARKS	32
7.1 Recent Development	32
7.2 Political Application and Further Research Propositions	33
REFERENCES	35

Freedom for the pike is death to the minnows.

– Richard Henry Tawney

1. Introduction

1.1 Motivation

Liberty and rationality are perhaps the two most important concepts in any science examining society and interactions of individuals within it, but most notably so in economics. They both have their exact definitions but they are empirically present only to certain degree, beyond which we can only anticipate their presence or absence. Therefore, we usually look at them through optics of ideologies that predicate them certain traits and functions, because it is difficult to verify or falsify these judgements. There is nothing wrong with accepting the beliefs established by the great spirits of the history, there comes a time, however, when they should be confronted with later findings and, in case of need, reworked.

We chose to work with liberalism because it is politically a very sensitive issue. It is not a coincidence that both right- and left-wing parties call themselves liberal and that the struggle for liberty shelters movements as diverse as libertarians, anarchists or communists. To be on the side of liberty is a tricky statement that can mean different things, according to who is making it. The original ideas of economic liberty are very old, and might therefore collide with today's reality, which is very different from the one, in which they originated.

Much effort is spent on revising and upgrading old models expressing relationships between variables and thus abstracting our knowledge of social processes into simple formulas. But very little is done to revise ideologies that present yet another level of abstraction. They sum up the thoughts and beliefs of dozens of thinkers gathered over centuries and present them in elegant packages of axioms, explanations and recipes. To dissect such complex organisms and look for their original assumptions and inner lines of reasoning is certainly a messy and difficult work. It can never be done quite precisely and perfectly. But by avoiding it, we increase the danger of

ideologies degenerating into bunches of theorems that are either to be taken or left; trusted or distrusted.

This paper can hardly have the ambition to do such a revision of the liberal doctrine. But what it can do is to look more closely at some of its central works and compare them with objections and propositions raised in recent years and verify if the theories remain consistent in the light cast by these modern findings. The objective of this paper is to ask questions and suggest answers to them but they are not definite and are more likely to be reached through a discussion than through such a research.

Although the topic may seem to be a very abstract and philosophical one, far from the actual lives of individual people, it will be shown that the implications of our questions are in fact encountered by everyone on a daily basis – either at the market or even in more private sectors.

1.2 Aims

Our liberty from others and the state is established by limiting their liberty to intervene in our own affairs. This sounds like a paradox, because symmetrically extending the freedom¹ of all may then cause a decrease of freedom of every individual member of the society. And indeed, some critics of the free market and democracy claim that the system, whose most inherent value is liberty, is enslaving them. Such objection is not nonsense per se just like the above statement is not a paradox.

To maximise individual freedom, an optimum upper bound to it must be found so that it is neither too limited nor overly extended. Limiting freedom too much would result in state interventions even in affairs that can be better dealt with by individuals, limiting it too little, on the other hand, would not protect them from

¹ In accordance with all the materials we will be working with, we use liberty and freedom as synonyms throughout this paper.

harmful actions of other individuals, because the state would withdraw from regulating and suppressing them. It is only in the optimum that the state leaves its citizens as free as possible while still protecting them. The task of defining such a Pareto-optimal framework was most notably addressed by liberal thinkers. In this paper, we will be examining the economic branch of this school and its concept of economic liberty.

As it will be soon exposed, their idea of the optimal limit always operated with some kind of rationality. Not, and this should be emphasised, the perfect rationality of simplifying economic models, but a carefully defined human capacity to decide with its limitations and perils, yet generalised and possibly idealised. To question this rationality is to question the thereby suggested extent of liberty because this is how its boundaries were established.

Therefore, we will confront this theory with the findings of behavioral economics, discipline concerned with the irrational factors involved in human decision-making, with the aim to find particular areas where the liberal assumptions are inconsistent with reality. Furthermore, we will try to assess to what degree these eventual inconsistencies can be eliminated by amending particular details and to what extent they are systemic, threatening the whole doctrine.

1.3 Methodology

The paper is divided into three sections, each of them considering the topic from a different angle. First we present the ideas of selected liberal theorists then we allow some space for categorisation of the liberty in question and for explicitly stating its philosophical assumptions and finally, we draw critical material from recent works on behavioral and social economics.

We endeavour to extract the very core of classical economic liberalism but to avoid generalisations we work with authors separately, showing the gaps between them. In order to be able to apply the theory on market interaction, we were looking

for authors with background in economics, not only philosophy or politics, concerned with economic liberty or, more broadly, '*freedom of action*' (Hayek, 1990, p. 35). Additionally, we wanted to avoid dispersing our attention over too many different intellectual currents, so we only chose thinkers belonging to what is today perceived as classical economic liberalism, leaving aside other notable, yet more peculiar, liberal branches, e.g. those of John Rawls or Robert Nozick.

According to those criteria, we chose the three most prominent thinkers, Jeremy Bentham, John Stuart Mill and Friedrich August Hayek. This is not because they held identical beliefs, on the contrary, there is considerable rivalry between their theories and listing them together would probably seem arbitrary to them. But yet they contributed to the same stream of thought and could well represent the development of liberalism in about hundred and fifty years that passed between them.

To carefully analyse the standpoint of each of these gentlemen, however, would require more space than is at our disposal in this whole paper. Furthermore, they were all fortunate to live until advanced age and their productive periods stretch over fifty years. Therefore, to avoid facing an immense amount of literature and solving *die Adam Smith Probleme* that would inevitably arise, we choose one work of each author, usually the one explicitly dedicated to liberty, and only work with it. It may be objected that other remarks on the same topic or later corrections can be omitted this way but we believe that presenting only these books will serve to make a more complete picture than diluting their content by other inputs coming necessarily from a different context.

The middle part shows the wider historical context of liberalism. We use works of other philosophers to specify the type of liberty we are dealing with and to show what other approaches have been proposed. Also, we look for more implicit assumptions of liberal liberty that go as far as the tradition of European Enlightenment. Although this may not seem connected with the issue of economic

freedom, the potential violation of these assumptions would have impacts on the very possibility of individual (market) liberty.

Finally, in the last section, we examine critical branches of economic theory, namely behavioral and social economics to determine if their findings are in conflict with the assumptions of liberal philosophers and, if so, to what extent it can be addressed by correction of particular details. There have been different streams of behavioral economics, both very prominently represented, so we mention both of them to gain a more balanced picture.

2. Jeremy Bentham

Every law is an evil, for every law is an infraction of liberty.

– Jeremy Bentham

Jeremy Bentham was an eighteenth century political economist and moral philosopher. As it was usual for his career in his times, he was a lawyer by education and we can track these roots in a great share of his works. Even the text we use in this paper is actually a legal polemic. This will serve us as a bridge between the old liberals concerned chiefly with the constitution of state and modern economic liberals aiming rather at the liberty of everyday activities, particularly those happening in the market, because the liberal democratic state, once dreamed of by their ancestors, was already constituted in their times.

The best work to illustrate Bentham's stand on liberty is his famous Defence of Usury. Here, in a form of letters addressed to a friend, he argues against laws regulating the interest on loans. Even though a great deal of this work is concerned with particular details of the law and the procedure of borrowing money itself, already in the introductory letter, Bentham makes it clear how he would build up his argument and what would be its central point. He claims that such '*restrain to the*

liberty of man should have a good justification to even exist and plans to gradually prove inadequate all its potential *raison d'être* he can think of in separate letters:

1. *Prevention of usury*
2. *Prevention of prodigality*
3. *Protection of indigence against extortion*
4. *Repression of the temerity of projectors*
5. *Protection of simplicity against imposition*

(Bentham, 2005, p. 3)

2.1 The First Letter

At the beginning of the letter, Bentham admits that '*usury is a bad thing and as such ought to be prevented*' (Bentham, 2005, p. 3). But this ought is not addressed satisfactorily, in his opinion, by the law setting an upper bound for interest. He argues that there is no natural interest rate that could be prescribed by law, because the market equilibrium stems from custom and custom is a result of the behaviour of free people that cannot be foreseen. Moreover, he shows how the interest rate differs throughout countries and history, disproving the existence of its natural level.

Additionally, he calls it '*absurd*' that a law should prevent two people from agreeing on terms convenient for both of them in order to protect the borrower (Bentham, 2005, p. 4). Throughout the work, simplifying examples of two men making a contract are used, perhaps to explain the matter on a clear model. But, at the same time, it points out to Bentham's underestimating of the negotiating ability, market power and information asymmetry between the parties. This becomes even more obvious when, at the end of the first letter, he asks for reasons why the rate is only regulated downwards: '*why, in short, he [the legislator] should not take means for making it penal to offer less, for example, than five per cent., as well as to accept more?*' (Bentham, 2005, p. 5).

2.2 The Second Letter

The goal of this letter is to show that the usury law does not have a positive effect on preventing prodigality, or, spending more money than one can afford to spend. It is clear that, as long as a prodigal has enough money or a good security, there is no difference the law would make. In the opposite case, it would be intuitive that the borrower can only get a loan with a higher interest or not at all. Bentham argues that the latter would be the case even without any regulation imposed by the law. That is because his friends would know about his prodigal character and strange people would be alarmed to higher suspiciousness by the mere circumstance of him not being able to borrow money from his friends.

But this is not universal – in other cases, it is possible to borrow money on higher interest without any security. In a letter to Adam Smith, Bentham claims that projectors (or future entrepreneurs) in new trades, who do not yet have any possession to use as a security, would only be able to borrow money for their projects with higher interest, i.e. not in the contemporary system. This is interesting because it means that relaxing the regulation would help innovative projectors get more expensive loans but not prodigals for the same purpose. Bentham seems to believe that the lenders would be able to make difference between poor investors and poor consumers but they would only be able to evaluate the risk of future insolvency in the former group, not lending at all to the latter.

2.3 The Third Letter

In this part, an emphasis is put on separating indigent, or poor, borrowers from simple ones. Thus, in this letter we will be supposing a poor man with '*no particular defect in [his] judgement*' (Bentham, 2005, p. 7), a rational one, so to speak. In this case, it is not difficult to show that he can make the best decision for himself in an unregulated market and the poverty itself does not restrain this decision in any way.

Moreover, the conclusion of the letter offers a generalisation that will be useful for our purpose later:

'It is not often that one man is a better judge for another, than that other is for himself, even in cases where the adviser will take the trouble to make himself master of as many of the materials for judging, as are within the reach of the person to be advised. But the legislator is not, cannot be, in the possession of any of these materials' (Bentham, 2005, p. 8).

2.4 The Fifth Letter²

Protection of simplicity is a key part of the whole work because this is the most likely way how absence of the usury laws could be abused. In this context, it is a disappointment that Bentham only re-exploits the previous argument to marginalise the danger. *'I think I am by this time entitled to observe, he begins, that no simplicity, short of absolute idiotism, can cause the individual to make a more groundless judgement, than a legislator (...) would have made for him'* (Bentham, 2005, p. 8).

But even in the case where a legislator would be able to make a better decision for an individual, Bentham sees no reason why it should be borrowing money in particular that were to be regulated. Because in this case, he argues, there would be many more situations where the same would hold. For instance, everyday goods purchases should then be an even better object of regulation because the individual's simplicity is the same there and these are much more commonplace. But as Bentham concludes, it is unthinkable to protect consumers in this matter by a general regulation of prices.

However tiny the work is, it offers very innovative and provocative thoughts, as was typical for Jeremy Bentham. It is far from systematic approach offering a wider

² Fourth letter is addressed to Adam Smith and listed at the end of the work. Apart from the reference above, it is not interesting for our topic, so we skip it.

picture of what free market should look like. Yet, it draws the basic lines of protecting individual economic freedom and invites others to develop these schematic ideas.

3. John Stuart Mill

The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant.

– John Stuart Mill

John Stuart Mill was two generations younger than Jeremy Bentham and, among his other occupations, he tried to modify or humanise the rough doctrines of his (and his father's) friend and teacher. We will be working with one of his major works, *On Liberty*, where he systematically introduces his conception of a free society.

There are two different approaches to the matter of liberty used in the book. One is liberty as means to improve the society and reach other targets believed to be beneficial for it. Second is liberty as a value per se, an end by itself. It is a step between older Bentham, who tends to appeal to reader's sense of justice and seeks a solution that would feel right, and younger Hayek, who is rather concerned with the consequences of freedom and makes it clear that it should serve foremost as an instrument for achieving other goals. Similarly, his understanding of economy was stretching between two sorts of laws – social and natural ones (Sojka, 2010).

We will be interested in three chapters of his essay *On Liberty* that deal with individuality as an element improving society, limits of authority over an individual, and applications of the principles, in this order. The first two represent the notions of what we called instrumental freedom and freedom per se, respectively. The last chapter shows limits of both, not admitting freedom where it would harm the society as a whole or its members.

3.1 Benefits of Individuality

In the chapter Of Individuality, as One of the Elements of Well-Being, Mill aims to show that individual liberty should be beneficial for society because the latter is imperfect and can only become better by changing some patterns of behaviour. Social progress, i.e. changing these patterns for better ones, can only happen from below – by individual people finding new ways of living. And such a diversity of *'different opinions'* and *'different experiments of living'*, growing in a free society that does not regulate private behaviour, is most likely to generate an evolution, showing what leads to improvement and what does not (Mill, 1993, p. 65).

Following this, Mill criticises the importance of the role customs and social norms played in the decision making in his time. While people may often profit from the experience of their ancestors, they should not fully rely on it. When a choice is made according to a custom rather than the specific situation of the affected individual, it would not lead to the best possible behaviour. Moreover, not employing one's faculties and abilities and rather taking the safe way of the habit would deprive him of a *'worth as a human being'*. As the author puts it, *'he who lets the world, or his own portion of it, choose his plan of life for him, has no need of any other faculty than the ape-like one of imitation'* (Mill, 1993, p. 68).

Apart from circumstances of their lives, people also differ in their character, or in Mill's words, *'impulses'*. He identifies ones with stronger impulses, i.e. feelings and desires, as those who have *'more of the raw material of human nature, and [are] therefore capable, perhaps of more evil, but certainly of more good'* (Mill, 1993, p. 69). So, should the society profit from this natural individuality, it is not to be suppressed by laws requiring uniformity of lifestyle.

It should be stressed in this place that all the preceding support for individual freedom is meant with regard to law. We may not approve of many ways of living but it should not be a matter of law, Mill argues, to forbid them. The way to discourage people from choosing them is proposed in the next chapter.

3.2 Protection of Values

The central principle of the whole essay, quoted in the motto of this chapter, is a very simple one and it would be difficult to question. But confronting it with particular examples, we will soon realise that it is not quite clear what exactly can be classified as harm to others and what is still individual's own business. Also, there will clearly be examples where the experiments of living do not serve any purpose in the evolution of the society. In the chapter *Of the Limits to the Authority of Society over the Individual*, Mill defends liberty to make mistakes and suggests some social correctives.

Mill admits that harming oneself will always necessarily result in harming – directly or indirectly – other members of the society. Expectable effects would be that the person in question would not contribute to the social welfare, might neglect care of people depending on him and would quite probably set a bad example for others. But while this resulting harm caused to others should be properly punished, one should not be a subject to coercion for one's actions indirectly causing it. As it cannot be judged *ex-ante* to what result it will lead, it should remain individual's responsibility to take this action and bear the consequences. But should the individual be the only one hurt by his own actions, even though there is some social cost to it, Mill believes that *'the inconvenience is one which society can afford to bear, for the sake of the greater good of human freedom'* (Mill, 1993, p. 94). This is an important point because the author admits a higher priority to freedom than he does to prosperity. It becomes obvious that, when he describes the benefits brought by extending individual liberty in the previous chapter, he means it only as a partial argument to advocate for something that he deems more substantial.

If law ceased to regulate private business of individuals, as Mill demands, there would be some danger of such unfavourable behaviour, proven impotent of any progress for society by many previous experiments, becoming more common. Here, he would like to employ the soft corrective measures of the public opinion. It should

provide people with advices, feedback and soft incentives to behave in a fashion perceived as moral or correct but at the same time the final choice would belong to the individual. For this purpose, Mill calls for relaxing the obstacles politeness sets to such manner: *'It would be well, (...) if one person could honestly point out to another that he thinks him in fault, without being considered unmannerly or presuming'* (Mill, 1993, p. 89).

Regarding economic behaviour, Mill suggests a full liberty under voluntary consent of all parties. Society should have no jurisdiction over a situation *'when a person's conduct affects the interests of no persons besides himself, or needs not affect them unless they like (all the persons concerned being of full age, and the ordinary amount of understanding)'* (Mill, 1993, p. 87). This far, it would be in full accordance with Mill's friend Bentham, i.e. conditioning interaction with others by voluntary consent, but there is also something else to deal with cases of abuse. *'[U]nfair or ungenerous use of advantages over [others]; even selfish abstinence from defending them against injury – these are fit objects of moral reprobation, and, in grave cases, of moral retribution and punishment'* (Mill, 1993, p. 90). It is a very vague statement but it indicates what Mill's view on usury in the traditional meaning would be. It also offers a way to deal with the market power asymmetry, because abusing it would be an *'unfair use of advantages'* over customers.

3.3 Implementation of the Principle

The last chapter, Applications, deals mostly with more specific examples illustrating the practical application of the theory. It also sets some restrictions where the basic principle should not be followed literally.

One of the limits of freedom over oneself is the freedom itself. If somebody wanted to become deprived of liberty, e.g. sell himself to slavery, it would not be possible. *'It is not freedom, to be allowed to alienate his freedom'* (Mill, 1993, p. 118). Another desirable intervention takes place, if someone decides without knowing an important piece of information. If somebody is seen entering a bridge known to be

dangerous, it is possible to stop him (even by force, if the situation does not provide enough time for an explanation of the problem) *'without any real infringement of his liberty; for liberty consists in doing what one desires, and he does not desire to fall into the river'* (Mill, 1993, p. 111). But the same would not apply if there was no certainty, only some risk. Then it would only be possible to inform the person about the risk or advise him. It is not very clear, however, to what extent the principle of liberty, as a desire, rather than the actual action, is applicable in more probable market situations, under the condition of missing information.

It is also explained that harming others can be even desirable in some situations, for instance in the market competition causing loss to competitors will cause the society to profit. In general, Mill writes that free trade is in accordance with his doctrine as long as both producers and suppliers are free to choose the opposite party and as long as no forbidden means are used to achieve success.

But trade can also have negative impacts on society. While Mill believes that fornication and gambling should be tolerated as private matters, he is much more hesitant about allowing the business of pimping or gambling-house keeping. He provides the reader with arguments both pro and contra but leaves the issue unanswered, admitting both sides a considerable strength. There should not be a ban to keep the consistency in what is allowed – once the activity itself is not illegal, neither should be the business. Furthermore, the state is not likely to keep such enterprises from existence as long as there is demand for them. They should, on the other hand, be forbidden because such subjects would promote something believed to be wrong. *'The interest, (...) of these dealers in promoting intemperance is a real evil, and justifies the State in imposing restrictions and promoting guarantees'* (Mill, 1993, p. 115). This is a very important argument: the market should be regulated where its powers promote moral or material damage to members of the society, even with their consent. There should at least be legal obstacles to limit the competition, but the possibility of a general ban is also left open. This is, once again, an option to assure the liberty not being abused against the interests of the society.

And indirectly, the argument shows that the moral values occupy the same level of importance as the liberty itself.

4. Friedrich August von Hayek

What a free society offers to the individual is much more than what he would be able to do if only he were free.

– Friedrich August von Hayek

We have already mentioned that classing F.A. Hayek, one of the most famous twentieth century philosophers and economists, in the same group as Bentham and Mill may seem somewhat arbitrary and he himself would not be very amused by such turn of events. Owing to this injustice, we will put emphasis on the differences in his view. At the same time, however, we will be able to observe certain trends in which he seems to continue where his older colleagues stopped. We will be working with his separate book on liberty, *The Constitution of Liberty*. Compared to the above mentioned thinkers, Friedrich Hayek is primarily interested in general principles at a high level of abstraction, so we will be working with these rather than with particular examples.

4.1 Historical Context

Hayek recognises two separate lines of liberal philosophy and puts an emphasis on not confusing them. These are the French rationalist branch, represented by Rousseau, Hobbes, de Condorcet, but also Bentham and Mill, and the British evolutionary tradition, including most notably Hume, Smith, Ferguson, Burke, and also Montesquieu or de Tocqueville. While the former are reported to believe in human rationality and in the ability of men to constitute an ideal state based on human intellect, the latter rely rather on tradition incorporated in the gradually developing institutions.

Hayek himself believes to be part of the British antirationalist tradition and describes the views of the other school as *naïve*, mentioning their account of '*natural harmony of interests, natural goodness of man and natural liberty*' (Hayek, 1990, p. 60). This admiration of the natural state of man, topped by the term *homo oeconomicus* introduced by Mill is opposed by Hayek when he stresses the role of gradually emerging institutions in controlling the '*primitive and ferocious instincts*'³ (Hayek, 1990, p. 60-61).

4.2 Evolution and Progress

But for the evolution to take place, individual liberty is vital. It is the same argument as we have seen by Mill – more liberty allows for increased variability and variability will provide new solutions that will eventually prevail and bring the evolution. Moreover, freedom can cause progress beyond all boundaries of individual imagination: '*Liberty is essential in order to leave room for the unforeseeable and unpredictable*' (Hayek, 1990, p. 29).

The instrumental value of liberty fully comes to light when Hayek argues that '*it is certainly more important that anything can be tried by somebody than that all can do the same things*' (Hayek, 1990, p. 31). It is because a discovery is only needed to be made once to enable the whole society to profit from it. But, as the invention, the inventor cannot be known in advance, so '*this freedom we can assure to the unknown person only by giving it to all*' (Hayek, 1990, p. 31). The circle of the argument for free society is thus closed without any reference to right to liberty or any plea for the good as it is perceived by the readers, as we could identify by Mill. The argument is more pragmatic than ideological.⁴

³ Notably, these institutions are supposed to emerge naturally (by themselves) too. So while the French branch is said to idealise an individual man, believing him to be naturally good, the British one, as presented by Hayek, believes in the higher rationality of freely evolving society that will *naturally* develop the best rules to keep its members' negative traits under control and bring the best total outcome.

⁴ But the notion of justice is not quite absent either. Screpanti & Zamagni (1994, p. 371) describe Hayek's idea of justice as '*process-oriented approach*', where the legitimacy is derived from the process

The relativity of what is desirable is explained together with the notion of progress. It is introduced as a strictly value-neutral term: *'Progress in the sense of the cumulative growth of knowledge and power over nature is a term that says little about whether the new state will give us more satisfaction than the old'* (Hayek, 1990, p. 41). Furthermore, the question of happiness does not even matter. *'What matters is the successful striving for what at each moment seems attainable. (...) Progress is a movement for movement's sake'* (Hayek, 1990, p. 41). This last sentence means that it is not the concrete achievements of progress what is important but the development itself, providing every generation with what was unthinkable for the previous one. It is because *'in [a progressive society] most things which individuals strive for can be obtained only through further progress'* (Hayek, 1990, p. 42).

What we called the relativity of desirability in fact means that values are subordinated to progress, not vice versa (as it would be by the older authors). *'It is a fact which we must recognize that even what we regard as good or beautiful is changeable'* (Hayek, 1990, p. 35). Additionally, this decision is to be made by the evolutionary process, which seems to incorporate the rationality that individuals lack. *'All that we can know is that the ultimate decision about what is good or bad will be made not by individual human wisdom but by the decline of the groups that have adhered to the wrong beliefs'* (Hayek, 1990, p. 37). So the truth is to be shown by the way in which society develops without any need for man-made judgements about it.

4.3 Individual Capacities

The optimal framework for this evolution is, according to Hayek, the free market as a transmitter of information about the progressive potential of each action. Those leading to favourable results will be rewarded and vice versa. Hayek argues that it is always the free individual who can make the best use of his capacities and the free society that can provide him with the best feedback of what is needed. The exercising

(which is supposed to be a deregulated interaction of rational and self-interested individuals) not from the end.

of one's abilities is called *'entrepreneurial capacity'* and it is remarked that *'in discovering the best use of our abilities, we are all entrepreneurs'* (Hayek, 1990, p. 81), with a clear reference to the market mechanisms that the society should benefit from.

This brings us to the notion of individual rationality. We have already mentioned that Hayek believes it to be quite limited and argues that it is more enforced by the institutions than natural. Very often, he stresses the ambiguous character of choice that means both opportunity and responsibility. By forwarding both of these to people, they should be made rational with regard to the consequences of their actions, because everyone will bear them individually. Such liberty would then educate people to behave reasonably and consistently. To maximise the educative function, responsibility should be assigned in order to create the most desirable future incentives, not according to the circumstances of particular cases. This seems to be applicable especially to punishment for unfavourable actions, which is believed to have an effect on people who would commit the same actions in future. There are, however, limits to responsibility that should be taken into account to make it functional as an incentive. It should be strictly individual, not collective, and definite, *'adapted both emotionally and intellectually to human capacities'* (Hayek, 1990, p. 83). It is not quite clear in the context what Hayek means by the emotional dimension, but he thereby appears to be more considerate for human imperfections than we have seen by the older philosophers.

To summarise Hayek's account, he treats liberty much more with the regard to the consequences it will have for society. The evolution of social norms and general progress is the primary value and it should be brought about by as free an operation of the market mechanisms as possible, which will favour the desirable changes. For our topic, it is interesting that the limits of rationality are mentioned but, in the end, the demanding imperative for rational a priori calculation is very similar to that of Mill.

5. Categories of Liberty

Freedom is self-mastery, the elimination of obstacles to my will, whatever these obstacles may be – the resistance of nature, of my ungoverned passions, of irrational institutions, of opposing wills or behaviour of others.

– Isaiah Berlin

5.1 Two Concepts of Liberty

To identify some common elements in the previously discussed theories, and also to comprehend them in the context of the history of ideas, we will use the optics of a British philosopher and Hayek's contemporary Isaiah Berlin. This step will not be purposeless, it will allow us to understand the difference between the freedom introduced by our liberals and the one of their critics. In the end, it will enable us to spot the pressure points between the liberal liberty and the notion of Immanuel Kant introduced in the next chapter. Finally, these critical areas will be where the behavioral account aims to find its scope for analysis, as we will see in the following section.

In his most significant essay, *Two Concepts of Liberty*, Berlin presents two interpretations of liberty which he considers to be '*the central ones, with a great deal of human history behind them*' (Berlin, 1992, p. 121). Before we concentrate on what each of them means, it is necessary to note that Berlin is foremost a political philosopher and so freedom is one his chief concerns. He also mentions the term economic freedom but in connection to the affordability of commodities or services. The freedom of activity that this paper is interested in is covered by Berlin's notion of political freedom.

5.1.1 The Negative Notion or Liberty from

The first and more important is the negative liberty. The author sums it up by the following question: *'What is the area within which the subject – a person or group of persons – is or should be left to do or be what he is able to do or be, without interference by other persons?'* (Berlin, 1992, pp. 121-122). The area of negative liberty is thus an individual's sovereign territory, where no other persons are allowed to interfere with him.

Berlin stresses that the negative liberty does not take into account any natural limitations of the individual, the negative definition implies that it is only said to which degree an individual is left to himself by other people, but not what he will do. Beyond this degree, there is coercion. It may not only take the form of physically forcing the individual to certain actions but also of limiting the number of his choices or making some of them more costly through their consequences. Berlin offers multiple criteria to estimate the amount of negative liberty but at the same time he admits that it is very difficult to measure precisely and only some more vague answers can be given by in rather general terms.

5.1.2 The Positive Notion or Liberty to

The positive liberty, on the other hand, asks about the source of an individual's decisions. The struggle for positive liberty is one against the unwanted features of oneself rather than some external authorities. Berlin shows it on the contrast of a *'slave of nature'*, in the meaning of someone who is driven rather by *'unbridled passions'* than his own mind, and an *'autonomous self'*, mastered by his own decision (Berlin, 1992, p. 132).

To attain the positive liberty, it can be *'justifiable, to coerce men in the name of some goal, (...) which they would, if they were more enlightened, themselves pursue, but do not, because they are blind or ignorant or corrupt'* (Berlin, 1992, pp. 132-133). This can happen either with the preliminary consent of the individual or even without

it. It is obvious that, although both negative and positive liberty aim to set an individual free, they would often use contradictory means and could hardly be reached both at the same time.

It is obvious that the works discussed in the previous chapters deal with the boundaries of negative freedom. All of the cited thinkers (and very prominently Mill, who is often mentioned in Berlin's essay) were concerned with the limits of authority over an individual, rather than suggesting what people should do within their private sphere⁵. In the following pages, we will offer a different idea of negative freedom.

5.2 The Genesis of Liberty

It is not a coincidence that rationalism and liberalism have appeared together throughout the history of thought. We have already seen by Hayek how important the rational judgement is for even his idea of liberty which he claims to be less rationalistic than the other stream, let alone the older authors. To clearly show the underlying assumptions of rationalism behind the very basic idea of freedom of an individual, we will go further to the past and use works of seventeenth century moral philosopher Immanuel Kant. Himself a political liberal,⁶ Kant was interested in the genesis of liberty as a background for his major works on ethics.

5.2.1 Breaking the Automatic Cycle

Like Isaiah Berlin, Kant recognises two types of liberty: negative and positive one. But both of them fall into the positive category of Berlin because they are both concerned with the independence on individual's inner irrational imperatives. German Historical Dictionary of Philosophy offers the following definitions of Kant's

⁵ Interestingly, we can recognise elements of positive freedom in Mill's essay On Liberty too – it is when he describes full humanity blooming when people are left free, in contrast with those ruled by the custom, who only need the '*faculty of ape-like imitation*' (Mill, 1993, p. 68). Berlin also points out this not quite plausible combination of the two liberties in Mill's account, but we have already shown that it was the principle of negative freedom that had precedence over the – positive – well-being that it was expected to yield.

⁶ Ritter, 1972

account of freedom: *'Negative: independence of will on the pressure caused by the incentives of sensuality. Positive: The ability of pure reason to be practical for itself'* (Ritter, 1972, p. 1092, own translation). Similarly in *The Cambridge Companion to Kant*: *'Negative: absence of determination by needs and desires. Positive: choices are determined by a law internal to its nature.'* (Guyer, 1992, p. 328).

This means that in order to even be able to decide freely, one must exercise rational thinking ignoring all her material needs and desires. As the authors of *Modern History of Philosophy* put it, *'[a]nthropogenesis in [Kant's] concept means the birth of liberty in man, which in the negative definition of liberty is represented by the problem of controlling animal desires, i.e. breaking the automatic cycle of needs and actions leading to their satisfaction (instinct)'* (Sobotka, Znoj & Moural, 1993, p. 154, own translation).

It is vital to point out that Kant believed this cycle to be already broken – according to him, all people were free from the animal needs in their decisions and thus rational. But this process was a necessary first step to even enable us to discuss liberty in the negative concept of Berlin. Without it, the independence on others would become an empty term because there would be no will of our own, only the previously explained *'automatic cycle'*.

What is even more important for our cause, the above described idea of rational decision-maker sets the borderline between an individual and society. Within it, the individual is independent, i.e. cannot be forced to actions by others but neither can she be protected from her own decisions. Beyond it, different pressures await and individual's responsibility is also limited. And this line is drawn by what we perceive as capacity of a rational judgement, or, as Mill puts it, *'ordinary amount of understanding'* (Mill, 1993, p. 87).

The sovereign zone of each member of society is defined by the limits of a priori calculation. Facts that can be known or predicted at the time when a decision is made are automatically believed to be taken into account. Additionally, the influence of all

irrational desires or logical fallacies on the decision-maker is neglected and no protection from it is offered. This is because the agent is believed to be free from such impulses and fully under control of her will.

5.2.2 Implications for Liberalism

We can show it on already known examples: if the terms of what we called usury are known in advance, both parties can freely decide whether the contract is beneficial for them and no protection or regulation is required. The state's role is only important in case where the calculation was disabled e.g. because of false information provided. In Hayek's account, this would mean that, as long as individual knows in advance what consequences her actions are going to have, she avoids doing those that are not worth their future costs. There is, again, no need to intervene (either in the form of coercion or some unasked advices) in this decision because the individual's will is fully capable of weighting the benefits and her information is better than anyone else's.

None of these implications, however, would make sense once the assumption of Kant's negative liberty is violated. If there were areas where the individual is – partially or fully – not sovereign over her decisions, then there would have to be some other laws of what we called '*sensuality*' or '*automatic cycle*' making these decisions instead of the free will or at least having influence on them. Then anyone with a better understanding of these laws than the actual individual agents could exploit them in the liberal setting, because no protection is afforded from one's own predictability and suggestibility.

The effort to discover such areas and to find exact distinctions between real people and rational decision-makers is one of the leading motives of the behavioral economics and it will be one of our main concerns in the following section of this paper. And the stakes are high for we have just shown that finding such irrational laws wielding our decisions could threaten the core works of economic liberalism and would at the very least require some corrections in them.

6. Objections

It is always thus, impelled by a state of mind which is destined not to last, that we make our irrevocable decisions.

– Marcel Proust

There are two basic lines of behavioral theories varying in the extent of assumed rationality and consistency of people. We will compare them to assess how much their implications for our case would vary. Following this, we will use the already processed liberal theories to match statements on the same points and find the differences. We will also offer a brief introduction to other limitations of liberty that can occur due to its social impacts. To start with, we introduce the most common fallacies and biases as identified by the more critical branch of behavioral scientists.

6.1 Basic Biases

In their popular and very influential study *Nudge* (2009), Thaler and Sunstein speak of the first one as '*optimism and overconfidence*'. This can have milder implications, as vast majority of people believing to be over average drivers or more than half of students of a certain class expecting to score within the top twenty per cent at the end of the year, but also more serious impacts when people underestimate their future risks of health complications, losing job or divorcing, although they are well aware of the general frequency of such events.

While making a decision, people are also notably influenced by the format of input information, called as well framing. It matters whether they are told that they could save money thanks to some product or that they lose money if they do not use the product. Also, simply repeating certain information to customers or making a phone call to remind them of it causes them to change their behaviour (Skořepa, 2011; Thaler & Sunstein, 2009).

Another fallacy is the '*status quo bias*'. It means that people are always more likely to preserve the current state of things whatever it is because then they do not have to change anything. Furthermore, options set as default are chosen with higher frequency. This can again lead to ridiculous situations when people subscribe to magazines that they do not read because the contract is automatically renewed, as well as sterner ones when people do not change their pension fund contribution, investment strategy or beneficiaries over long periods (Thaler & Sunstein, 2009).

It has also been proven in experiments that the menu of choices can matter more than what we would call consumer preferences. By extending the menu (typically by a similar but inferior choice), some of the current options can be made chosen more frequently (Skořepa, 2011). But even such apparent details as the order of options stated in the menu or their availability at the eye level – e.g. in supermarket – do matter (Thaler & Sunstein, 2009).

6.2 Two Behavioral Currents

An alternative view is offered by Gary Becker (1996). He points out to the previously discovered limitations in human rational behaviour – imperfect memory, wrong calculations and the influence of framing questions. But taking them into account, he argues for (otherwise) rational utility-maximising behaviour and consistent preference functions. The work is older than those cited above, so it cannot address all the objections but it tries to explain some of them while having these assumptions hold.

Becker (1996) argues, for instance, that decision-making is costly – seeking and evaluating information requires time – and therefore, it is rational not to respond to some incentives and remain in status quo instead. This is the same reason why advertisement can have an effect on people's choices – not because it changes their preferences but because it provides them with information that makes some products more attractive.

Similar approach can be tracked in Thaler & Sunstein, (2009) where difference is made between the reflective and automatic system, the former being capable of well-weighted decisions and the latter deciding intuitively based solely on intuition, past experience and rules of thumb. The argument is that because of the additional costs required by thinking and the abundance of choices, people tend to use automatic one even in situations where it can have dangerous consequences.

Becker (1996) also makes much effort to fit addictions into the rational framework. He argues that there is capital increasing the utility of some goods which grows with their consumption: '*someone is addicted to a good only when past consumption of the goods raises the marginal utility of present consumption*' (Becker, 1996, p. 57). Moreover, to be addicted to some harmful good, the consumer's demand for it must be '*sufficiently inelastic*' (Becker, 1996, p. 33). In both of these conditions there is some individuality involved and addiction is only developed when a person with propensity for it matches the right type of addictive good. Then addiction can maximise utility over time.

Skořepa (2011), on the other hand, explains addictions with time inconsistency. He argues that although '*there seems to be practically no reliable research of this type testing **directly** for the existence of time inconsistency*' (Skořepa, 2011, p. 326, original italics are in bold), it can be derived from real-life stories as overeating (preferences differ in the evening while at the table and later at night while feeling pain in the stomach). He also shows how people deal with the inconsistency through restrictions of some future options or punishment for the unfavourable choices made later. He describes the problem of willpower as one where two selves, one from each period, fight for the application of their preferences in the final behaviour.

Similarly Loewenstein in his article Out of Control argues for limited control over oneself during some specific situations. He does so through introducing the effect of visceral factors on decisions. These are '*cravings associated with drug addiction, drive states (e.g., hunger, thirst, and sexual desire), moods and emotions, and physical pain*' (Camerer, Loewenstein & Rabin, 2004, p. 690). Their effects are also said to be

predictable and therefore they are used by various businesses or even interrogators and lawyers. The stages of influence can be described as follows:

*'At low levels of visceral factors, people generally experience themselves as behaving in a rational fashion. At extremely high levels, (...) decision making seems **arational** – that is, people don't perceive themselves as making decisions at all. It is the middle region of visceral influences, when people observe themselves as behaving contrary to their own perceived self-interest, that they tend to define their own behavior as irrational.'* (Camerer, Loewenstein & Rabin, 2004, p. 717, original italics are in bold).

Looking closely at these two ways of reasoning, we soon realise that, using empirical evidence, it would be very difficult to decide whether we believe in limited rationality in people's choices or in their capacity of rational calculus that binds them to be irrational because the cost of rationality is too high. Similarly, preferences consistent over time but not reflected in behaviour because of erroneous calculation may well seem to be inconsistent preferences. But these questions matter only to a limited extent, because in either case we will have to deal with limitations of people's capacity to choose correctly which creates space where third parties can exercise their will.

6.3 Paternalism and Manipulation

It is because all these reappearing errors in decisions create a gap between will and actual behaviour. There are generally two ways to fill it – cultivation and manipulation, the former being primarily concerned with improving the decision algorithms (typically through education) and the latter aiming at making people take actions preferable to the manipulator (Skořepa, 2011).

In *Nudge*, the authors propose what they call libertarian paternalism. It stands for designing the choices in a fashion that exploits the biases in the consumers' favour – providing *nudges* in the direction of healthier, safer, etc. choice – but at the same

time it should not stop them from choosing other options at zero or negligible costs. Additionally, choices should be intuitively apprehensible, understandably structured when complex, and providing the decision-makers with regular feedback (Thaler & Sunstein, 2009). This appeal is applicable to both government and private sector involvement but the latter can hardly be expected to promote customers' good more than its profit on its own behalf.

6.4 Flatly Applicable Rationality of Jeremy Bentham

The regularity of the described fallacies allows us to predict the direction of potential bias in each case. '*Unlike Econs [homines oeconomici], Humans predictably err*' (Thaler & Sunstein, 2009, p. 8). This is in contradiction with Jeremy Bentham's claim that it cannot be foreseen what mistakes are likely to be made and hence the legislator has no means of protecting the individuals from their own bad choices. Moreover, there are areas where errors are more likely to occur:

'It seems reasonable to say that people make good choices in contexts in which they have experience, good information, and prompt feedback. (...) They do less well in contexts in which they are inexperienced and poorly informed, and which feedback is slow or infrequent – say (...) in choosing among medical treatments or investment options' (Thaler & Sunstein, 2009, p. 10).

Same conclusion can be derived from an article introducing '*Behavioral Game Theory*', adjusted for human players. Among other features, it accounts for '*systematic deviations from rationality*' similar to the biases we have described (Camerer, Loewenstein & Rabin, 2004, p. 385-6). But these are only applied in the first period – later, behaviour develops as players are learning from the past experience (Camerer, Loewenstein & Rabin, 2004). So, convergence towards rationality is more likely to take place in often repeated situations than in those occurring only a few times in a lifetime.

This proves the comparison between interest rate and common goods' prices, which Bentham made, as misleading because in each case people exhibit a different level of expertise. While people are not likely to face problems with choosing the right bread or buying the right amount of it, they may be less secure about investing their savings or taking out a loan. The same applies to limiting the interest rate only in one direction – a bank or a usurer that provide credit every day are certainly less endangered by agreeing on unfavourable conditions than their customers.

It is understandable that Bentham as a pioneer of economic liberty was not very concerned with setting limits on it so it would not grow beyond the optimal extent, because this indeed did not seem to be a reasonable worry in his time. In the later works, however, we have encountered factors ensuring that liberty would not be abused.

6.5 Advisory Institutes of John Stuart Mill

John Stuart Mill, as we have seen, suggests using the institute of public knowledge and advice provided by neighbours. This has proved to be a particularly viable instrument in the free society. There are innumerable non-profit consumer unions and consulting organisations offering their clients recommendations and consultations. Also, the internet hosts huge number of unofficial fora where people can encounter experiences of others and advices of experts.

But nobody can afford to consult each decision with such sources because it usually requires some amount of time that the consumers cannot or do not want to spend. We have shown that Mill wants to restrict practices that would abuse advantages of one over another or those that would promote evil because it should not be helped by the market powers. This would certainly include consumer protection in cases when they are deliberately endangered by private firms in order to bring them profit, e.g., usury,⁷ splitting executions,⁸ etc. But there are many

⁷ We regret not to be able to dig deeper into the modern usurious practices of consumer credit providers but there are no empirical data at our disposal. So much we can say, however, that fifty-page

disputable cases in which it is not clear whether they would fall in this evil category and many practices of more minute manipulation that would certainly not, although they can influence customers in an undesirable way.

6.6 Outsourced Rationality of Friedrich Hayek

Friedrich Hayek is much more sceptical about the natural rationality of people and hence introduces mechanisms to develop it. Alas, these mechanisms use rational expectations of consequences to educate people. The system of rewards and punishments based on individual responsibility can work very well for activities that are often repeated and offer feedback but its effects on big decisions in life can be disastrous. The only way to educate people in these cases is by the example of others (e.g., those who did not have health insurance) because, when somebody is struck by the educational punishment for making a mistake, it is already too late for her to make the decision again. Perhaps more caution can be enforced this way but only at the cost of putting people under an immense pressure of fatal mistakes lurking in every bigger decision.

It remains a puzzle, however, what exactly Hayek means by the adaptation to human capacities mentioned above. We have seen that people are capable of both intelligent choices and mindless acceptance of whatever is the way of the least resistance. But it seems that he was rather inclined to suppose the former because this is how free market can deliver the best progress – through rational decisions made there by all parties and Hayek did not suggest any adjustments for poor decisions (apart from those that would eventually appear by themselves through newly emerging institutions).

contracts written in inapprehensible law-speak shrinking on two pages are clearly an example of abused economic liberty and rationality assumption.

⁸ This affair has recently received much attention in Czech Republic. It has been exposed that private law firms divide executions of the same kind and deal them separately to gain more profit on the fees for processing them. These fees are naturally covered by the defendant (being added to the executed amount).

The main part of rationality by Hayek was carried by the evolution of institutions. It is free market that is supposed to transmit the incentives leading to improvement and progress. But as long as people err in the market, they may provide misleading incentives. Moreover, *'when consumers are confused about the features of the products they buy, it can be profit maximizing to exploit their confusion, especially in the short run but possibly in the long run too'* (Thaler & Sunstein 2009, pp. 238-9). Such an option questions the whole idea of the evolution in the desirable direction, because it may well happen that the development is driven by a mistaken or deceived demand. In other words, the rationality of development is conditioned by the rationality of the market players, especially consumers. This could be solved if consumers learn the lesson and pay more attention next time. But all the discussed biases appear repetitively and there seem to be no means for an individual to remove them from her behaviour.

Another objection to the extent of economic liberty proposed by the liberal school is that its outcomes often tend to limit the liberty of an individual. This problem was first identified at the beginning of twentieth century by sociologist Max Weber. He suggested that the economic system transformed voluntary asceticism into a necessity, an iron cage of production and division of labour (Weber, 1995).

This can be translated into the modern language as a race to the bottom, a competition leading to unfavourable results. This way free market can actually force people to stay competitive by doing what they need, not what they want to do. Some further examples, such as shortening periods of vacations over time, can be found in Boyle & Simms (2009).

6.7 Systemic Threat to the Idea of Negative Liberty

We have shown that the disparity between will and behaviour, ignored by rational philosophy, is indeed present in the lives of people. That means that we are not fully sovereign over our actions. But the complication is that this gap is only shown to be statistical, not absolute – it does occur by certain number of people in each sample

(so that there is a visible inclination in the overall data) but there are always people who can overcome the gap. There is hardly anyone who could claim that all her past decisions have been rational and that she always used careful reasoning to avoid manipulation or nudges but there have been many cases in the life of everyone when they made effort to avoid these obstacles and managed to.

We can see now that even though the assumption of sovereignty over oneself is being violated on daily basis, it still can be matched any time the individual people want to and spend enough time, effort and willpower to make their choice. Although there are statistically many *estranged* decisions that are made but virtually *not decided* by oneself (even though they officially are and the individual may be held responsible for them later) and although it is probably impossible to completely eliminate them, every person can overcome the difficulties in any of these cases whenever she likes.

This is, once again, a paradox. People cannot be fully free from the influences exercised on them through their weaknesses but they cannot be controlled this way either. We can only identify some sort of grey zone where manipulation may be successful (and paternalism may be required) but also may not. According to circumstances, there will be certain share of the population that is likely to fall victim to the interests of third parties in each case.

Therefore, the objections raised here are not capable of negating the whole idea of negative liberty as Berlin and the liberal philosophers present it. At the same time, however, the limitations people face in their decision-making process cannot be ignored when their impact is so obvious. The continuous pressure of potentially dangerous decisions (the case of insufficient protection, e.g. usurious contracts, executions following unpaid fines) and omnipresent manipulation attempts (marketing invading the personal space, salesmen practices or political manipulative techniques) can be fought with by self-cultivation and prudence. But this can only be done by everyone individually, in an endless struggle against teams of well-paid experts. Unless such practices are regulated with regard to human weaknesses, the

irrational area of life will be an object to arms race wasting a considerable amount of resources and making everybody worse off.

7. Concluding Remarks

We have identified specific points where the liberal political economists' claims are in contradiction with the recent findings of psychologists and economists. This is partly due to the changes in society but partly also due to the progress in understanding human rationality that took place meanwhile. We have shown that these contradictions may have a remarkable impact on the liberal doctrine and, without being addressed, can prove some of its core ideas dysfunctional.

We have also shown that the underlying assumptions of rationalism, which are necessary for the liberal liberty to be attained, do not hold in all cases, but they are not inevitably violated either. This means that the liberty we have been dealing with cannot be negated, based on the discussed material. At the same time, however, it suggests that there are gaps in the classical liberal theory that might eventually result in some more severe cracks in it, if they were to be further exploited by private subjects.

7.1 Recent Development

Within modern liberalism, there are tendencies to reformulate the inconsistent points instead of insisting on the original principles. In the introduction to the cited book by Mill, Alan Dershowitz points out areas of our modern life that require revision of the maxim of non-intervention into personal sphere. He suggests two exceptions which he calls '*light pinky of the law*' and '*thanks, I needed that*' (Mill, 1993, p. xi). The first one is a soft paternalistic incentive (here we can see that the idea of nudging people was at least fifteen years old when Nudge was first published) and the second deals with temporary irrationality, trying to help people recognise it.

Such reforms will be necessary to adjust the ideology to the changing world, much different from the one where the classical liberals lived.

Same trends can be observed in economics where homo oeconomicus is not assumed as vehemently as before. The notion of rationality is being revised and psychology and behavioral economics are gaining more influence on the mainstream theory. As we have seen, even in the behavioral approach there are multiple streams discussing and exchanging ideas and the development is certainly promising to bring a better understanding in this field.

7.2 Political Application and Further Research Propositions

Policy makers, however, are proving to be most persistent in their thinking. Although the behavioral discussion has lasted since late seventies when Kahneman and Tversky published their *Prospect theory*, little has been done to adjust economic liberty for these findings. Only in the recent years, when economic works are often written as bestsellers, are the ideas leaking out among voters and politicians, and the questions about how to address such fallacies are finally gaining some attention in the public discussion.

This lag in implementation may not necessarily be caused by the lobby of interest groups or dogmatic beliefs of politicians. It would be very complicated to define manipulation in the formal language of law and to prevent it from happening. We have seen that the techniques may be very subtle and it is very difficult to imagine them all subjected to regulation. Further research can perhaps reveal ways of limiting the possible abuse of irrationality in some grave cases. But to deal with the milder everyday manipulation, it might be more useful to employ public discussion and general idea of good practice. Such soft corrective of public opinion, together with the spread of information about the psychological weaknesses, might eventually drive out practices perceived as immoral or of bad taste.

The delay in resolving the problem and including the new knowledge in the political discourse, however, is becoming more costly with passing time. This is because science is still finding new patterns of irrationality and connecting them in a very complex understanding of how the human mind works. Since all these findings are available, it is easy to gather and exploit them in businesses that can profit from manipulation but it would be very costly for individual people to learn to avoid such techniques, even if they know about such danger and want to eliminate it. Therefore, the share of the estranged choices is likely to grow and the grey zone where self-control is not evident will grow with it. If such further development were to take place, its effect on the human psyche and on perceiving the liberty from coercion of others remains a question.

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