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FAKULTA SOCIÁLNÍCH VĚD

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Zdeněk Král

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**A Libertarian Critique
of the U.S. Criminal Justice System**

Diplomová práce

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Abstrakt

Práce analyzuje vybrané problémy, kterým čelí systém trestního práva a trestního řízení ve Spojených státech amerických, a řešení navrhovaná americkými libertariány. Nejprve na základě současných i historických pramenů komplexně představuje libertarianismus jako životní a politickou filosofii. Následně zkoumá reálný vliv libertariánů na americkou politiku, a pravděpodobnost, že se libertariánské návrhy podaří prosadit. Analyzuje úspěchy Libertariánské strany a představuje hnutí a frakce ve dvou hlavních stranách, Republikánské a Demokratické, a vlivné současné politiky, kteří libertariánské návrhy alespoň částečně prosazují. V závěrečné, stěžejní kapitole využívá práce teoretický základ z první kapitoly při analýze nedostatků amerického systému trestního práva a trestního řízení, a řešení či změn, které libertariáni navrhují. Struktura této analýzy kopíruje standardně uznávané dělení systému na trestní právo a jeho následné vymáhání skrz policejní složky, soudy a nápravná zařízení. Na každé z těchto úrovní nabízí práce jak představení libertariánské kritiky současného fungování samotného systému, tak příklady konkrétních problémů a navrhovaných řešení. Práce identifikuje takzvanou „válku proti drogám“ jako jeden z klíčových bodů libertariánské kritiky a využívá ji jako případovou studii, která ilustruje dopad legislativy na všechny složky trestního systému a její změnu jako navrhované řešení.

Abstract

The thesis analyzes selected issues in the U.S. criminal justice system, and the solutions proposed by American libertarians. First, it introduces libertarianism as a whole, based on both contemporary and historical sources. The thesis then examines the real influence of libertarians on U.S. politics, and the possibility that libertarian proposals might be adopted. It analyzes the successes of the U.S. Libertarian Party and introduces movement and factions in the two major parties, Republican and Democratic, and today's influential politicians who at least partially promote libertarian proposals. In the final, pivotal chapter, the thesis uses the theoretical base provided in the first chapter to analyze the shortcomings of the U.S. criminal justice system, and the solutions and changes that libertarians propose. The structure of this analysis follows the generally accepted structure of the system itself, dealing with criminal law and its enforcement through policing, courts and corrections. On each of these levels, the thesis introduces both the libertarian critique of today's system and examples of specific issues and proposed solutions. The thesis identifies the so-called "War on Drugs" as one of the key points of the libertarian critique, and uses it as a case study which illustrates the impact of legislation on each component of the criminal justice system, and its change as the proposed solution.

Klíčová slova

libertarianismus; politika; politická filosofie; USA; Spojené státy americké; trestní řízení; policie; soudy; vězení; trest

Keywords

libertarianism; politics; political philosophy; U.S.; United States of America; criminal justice system; police; courts; corrections; punishment

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Prohlášení

1. Prohlašuji, že jsem předkládanou práci zpracoval samostatně a použil jen uvedené prameny a literaturu.
2. Prohlašuji, že práce nebyla využita k získání jiného titulu.
3. Souhlasím s tím, aby práce byla zpřístupněna pro studijní a výzkumné účely.

V Praze dne 15. května 2015

Zdeněk Král

Poděkování

Rád bych poděkoval paní Mgr. Janě Sehnálkové za nedocenitelnou pomoc při výběru tématu práce a vedení v odborném a profesionálním, ale přátelském a neformálním duchu. Po celou dobu vzniku práce nabízela cenné rady a připomínky k obsahu i formě, díky kterým je výsledný text přehlednější, srozumitelnější a kompletnější.

Děkuji také dr. Anně Vidén, Ph.D., za pomoc při zpřesňování hypotéz a výzkumných otázek a za konkrétní připomínky k mému výzkumu. Děkuji prof. Normě Hervey, Ph.D., za odborné jazykové úpravy a cenné připomínky k obsahu práce. Děkuji prof. PhDr. Svatavě Rakové, CSc., za vedení diplomového semináře a její rady a pomoc při zúžení a zpřesnění tématu, a doc. PhDr. Miloši Caldovi za pomoc při zúžení tématu a doporučení relevantních zdrojů týkajících se politické filosofie. Můj díky také patří dr. Ronu Corbettovi, Ed.D., z University of Massachusetts Lowell, jehož odborné a praktické znalosti amerického systému trestního práva a trestního řízení, a doporučení relevantních zdrojů byly zásadní pro můj výzkum.

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V čem se proti původnímu zadání změnil cíl práce?	The topic is more specific: The thesis examines libertarian perspective on the criminal justice system of the United States of America and the problems it faces. It analyses the key issues that libertarians have with legislation, as well as with the other three levels of the system: policing, courts and corrections. Those issues include mass incarceration, the so-called “War on Drugs,” the death penalty and other topics.
Jaké změny nastaly v časovém, teritoriálním a věcném vymezení tématu?	Historical and ideological introduction to libertarianism remains an integral part of the thesis, however, the focus shifted from a broader overview to one specific area—the criminal justice system. That includes both the national (federal) level and issues on the state and local levels. The thesis also analyses real-life influence of libertarians.
Jak se proměnila struktura práce (vyjádřete stručným obsahem)?	<ol style="list-style-type: none"> 1. The Philosophy of Libertarianism <ol style="list-style-type: none"> 1.1. Life Philosophy 1.2. Libertarianism in Real-Life Politics 2. Real-Life Libertarian Influence on U.S. Politics <ol style="list-style-type: none"> 2.1. The American Political Terminology 2.2. U.S. Libertarian Party 2.3. Libertarians in Other Parties 3. Libertarian Critique of the U.S. Criminal Justice System <ol style="list-style-type: none"> 3.1. Laws and Regulations 3.2. Policing 3.3. Courts 3.4. Corrections 3.5. Case Study: The War on Drugs

Jakým vývojem prošla metodologická koncepce práce?

I managed to review several historical documents written by famous American thinkers, and link their individual ideas and concepts to modern American libertarian ideology. That helped me to create a theoretical base that can be used in further analysis. When examining current issues in the criminal justice system, I also largely draw from primary sources, and use the aforementioned theoretical base to analyze libertarian reasoning and decide whether the specific critique is consistent with the ideology. The thesis should also analyze official statistics and reports provided by the judicial branch and other branches of the government. In the final part, I will attempt to assess the real libertarian influence on the political situation in the U.S., by analyzing election trends, programs of libertarian factions and movements in the two major parties, and by introducing influential politicians who at least partially promote libertarian ideas.

Které nové prameny a sekundární literatura byly zpracovány a jak tato skutečnost ovlivnila celek práce?

I spent one semester abroad in the United States, and completed a course on Administration of Criminal Justice at the University of Massachusetts Lowell, led by Dr. Ron Corbett, who is, *inter alia*, a former Commissioner of Massachusetts Probation and Executive Director of the Massachusetts Supreme Judicial Court. I also attended a Libertarian conference, and I had the opportunity to talk to several key players in the U.S. criminal justice system, including a judge at a drug court, several prosecutors, defense attorneys and probation officers and commissioners. As a part of the course, I had access to a vast collection of academic and non-academic sources and a chance to find out what the key issues in the criminal justice system are for its administrators.

Charakterizujte základní proměny práce v době od zadání projektu do odevzdání tezí a pokuste se vyhodnotit, jaký pokrok na práci jste během semestru zaznamenali (v bodech):

- The topic is much more specific;
- The outline of the thesis' structure should be mostly final;
- I understand the historical and political context better;
- Research questions and hypotheses are more specific;
- Additional primary and secondary sources were added.

Podpis studenta a datum:

Schváleno	Datum	Podpis
Vedoucí práce		
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Introduction

The criminal justice system in the United States is broken. The land of freedom and opportunity has record-breaking incarceration rates, which lead to overcrowded prisons and ruined lives. Courts are burdened with tens of thousands of cases, yet only a tiny percentage of them end with the speedy trial promised by the U.S. Constitution. Citizens keep breaking the law, despite the harsh sentences, and there are so many laws and regulations now that it is humanly impossible to be familiar with all of them. And what are the costs of this failed system? Billions and trillions of taxpayer dollars.

Unsurprisingly, it seems that everybody is calling for a reform. Not only law enforcement, judges, correctional officers and other administrators of the criminal justice, but—maybe more importantly—also politicians. Liberals, conservatives, left wing, right wing... Their proposals, ideas and ideals differ, but they agree that changes are necessary.

This thesis argues that it is vital to examine and explain the position of libertarians as well. Firstly, like other political players, libertarians provide comprehensive proposals, and these proposals appear to deal with the current issues very effectively. That *per se* naturally does not mean that the proposals should be adopted, as the intent of this thesis is to present and to analyze them, not to promote them. Some proposals are rather extreme, requiring significant changes in legislation, but in social perceptions and priorities as well. Their overall indirect consequences are also uncertain, and must be subjects of research. Secondly, the proposals deserve to be presented and considered, because—as the thesis also aims to prove—libertarians are gaining influence in the United States. The reasons, not necessarily relevant to this thesis, deserve research, and they may include more favorable conditions for smaller and more radical parties as a result of manipulative redistricting¹; increasing resentment of the government after controversies such as the NSA surveillance disclosure; or simple general desire for changes in the status quo, including reform of the dysfunctional criminal justice. They may also be a result of the recent economic crisis and long-term issues of the economic situation in the U.S.; or even represent a basic “Newtonian” reaction

¹ David Brin, “Ten Ways that Gerrymandering Feeds a Vicious Cycle of Radicalization,” in *American Democracy: More Fragile Than We Think*, 2006, accessed April 28, 2015, <http://www.davidbrin.com/gerrymandering2.html>.

to the growth of government powers and the increase of laws and regulations. In any case, the U.S. Libertarian Party has experienced unprecedented successes in the past few years, libertarian factions in the Republican Party are more vocal, and powerful conservative groups like the Tea Party movement, which shares some ideals with libertarians, belong to the most influential American factions, including the “libertarian-ish” conservative presidential candidate Rand Paul. Libertarian triumph in national or presidential elections remains unlikely, but they are beginning to be a force to reckon with. In addition, libertarians should be studied simply because they bring different and new ideas into the political discourse.

For these reasons, knowing more about libertarians and their opinions and goals is important not only to political scientists and to experts in related fields, e.g. economists, but also to real-life politicians and ordinary voters.

Despite the topic’s relevance, the review of literature indicates that very little has been written about it. The reason for this lack of existing research may be practical. Until recently, libertarians had so little influence that they might have simply been of little or no interest to most researchers who analyze real-life issues. While libertarianism is still far from being mainstream, this thesis argues that because of its increasing influence, the research deserves to be conducted.

Even though the libertarian perspective on the criminal justice system as a whole was omitted, a lot has been written about individual problems that the system faces, including analyses of views that could be considered libertarian. Philosophers also described and analyzed the libertarian perception of justice, even if not *criminal* justice, and many researchers deal with libertarianism as a whole.

The first set of relevant studies deals with terminology, and the confusion which may be a result of similarities between two philosophies that are actually different.

Samuel Freeman argues in his article “Illiberal Libertarians: Why Libertarianism Is Not a Liberal View” that libertarianism is not a type of liberalism. He points out several differences between the liberal and libertarian perception of government and its role, but mainly claims that the two ideologies differ in the degree of importance they attribute rights and freedoms. Freeman presents evidence that libertarians resent the supremacy of social values over freedom of property and of contract, and insist that property rights are absolute and superior to rights which classical liberals consider to be basic

and unalienable. Because of the absolute ownership of self, which is included in the libertarian theory and is nothing else than another “property right,” and because of the absolute freedom of contract, alienability of other basic rights is possible, as long as it is voluntary. That is something classical liberalism would not permit.²

The necessity to deal with terminology is also illustrated by another study, that of Maddox and Lilie, who argue that American attempts to categorize politicians and thinkers into only two groups—conservative and liberal—are overly simplistic and wrong. They suggest that there are four combinations of personal beliefs regarding basic political and social concepts: the role of the government in economic affairs, and the importance of personal freedom. Those who would, simply put, agree with government economic interventions and disagree with the expansion of personal freedoms, would be “populists.” The opposite—proponents of personal freedoms and opponents of government interventions—would be “libertarians.”³

This thesis recognizes validity of both these studies and expands the debate with another analysis of terminological confusion related to American politics. It will aim to prove that the common perception of libertarianism as an ideology that is “fiscally conservative and socially liberal”—which is slightly different than Maddox’s and Lilie’s set of concepts—is wrong, at least in the American context; and will provide more accurate classification.

As for criminal justice, while we concluded that no large-scale studies deal with the whole criminal justice system, it is possible to find relevant ideas in works that examine and explain libertarian philosophy in general. Robert Nozick introduced many in his famous book *Anarchy, State, and Utopia*.⁴

While he deals mostly with the philosophical and social debates about “justice,” he also discusses concepts related to the criminal justice system, e.g. the appropriateness of private enforcement of justice and its prohibition, or procedural rights, including for example the debate whether people who are about to be punished have a right

² Samuel Freeman, “Illiberal Libertarians: Why Libertarianism Is Not a Liberal View,” *Philosophy & Public Affairs* 30, No.2 (Spring, 2001).

³ William S. Maddox and Stuart A. Lilie, *Beyond Liberal and Conservative: Reassessing the Political Spectrum* (Washington, D.C.: Cato Institute, 1986).

⁴ Robert Nozick, *Anarchy, State, and Utopia* (Oxford: Blackwell Publishers 1974).

to defend themselves, especially if they believe to be innocent.⁵ That and related ideas are used when discussing what the ideal libertarian criminal justice system would look like.

Moreover, while this thesis claims that such an ideal would involve a real system with real institutions, it is necessary to present the general debate between libertarians themselves, regarding the necessity of any government at all. Some libertarians are borderline anarchists and would not think that it is necessary to have a criminal justice system that is state-operated.

The debate will be introduced in the theoretical part of this thesis and link libertarian preference of a small government to 19th-century American thinkers, but the topic is still discussed today. A collection of essays and works of more contemporary thinkers, presenting the debate between proponents of a small state and opponents of any state, was provided by Long and Machan relatively recently, in 2008.⁶ Their selection illustrates that, even though the existence or non-existence of a governing body is obviously a significant difference, the ideologies of libertarians (who are mostly minarchists) and anarchists are still ideologically relatively close.

A lot has been written about the so-called War on Drugs, which serves as a small-scale case study explaining the impact of legislative decisions on all components of the criminal justice system. As an issue of legislation, it also significantly affects police behavior and situations in courts and on the correctional level. In addition, it serves as the best example of libertarian criticism, because it illustrates what libertarians see as a major, perhaps the biggest problem in today's system, and the necessity of making major changes at the very bottom of it, in legislation, should libertarian solutions be considered.

The issue has been debated for decades. The drug prohibition was criticized by libertarians in the 1970s and 1980s, as is illustrated by essays collected by David Boaz in 1990, as well as the name of the collection: *The Crisis in Drug Prohibitions*.⁷ Even then, drug legalization was considered, and, in fact, promoted as a solution.

⁵ Ibid., 88–119.

⁶ Roderick T. Long and Tibor R Machan (Ed.), *Anarchism/Minarchism: Is a Government Part of a Free Country?* (Aldershot: Ashgate Publishing, 2008).

⁷ David Boaz (Ed.), *The Crisis in Drug Prohibition* (Washington, D.C.: Cato Institute, 1990).

The ideas presented in works selected by Boaz are still relevant, and the libertarian perspective has not changed significantly—if anything, it is stronger. The failures of the first 30 years of the drug war, as well as its legitimacy and political and social effects, are discussed in a more contemporary collection of essays edited by Lynch and published in 2000.⁸ Especially important is the conservative perspective presented by Lungen,⁹ because the second chapter of this thesis examines the libertarian influence on U.S. politics and the contrasts between libertarian and conservative priorities.

The thesis builds on the libertarian ideological and ethical opposition to the drug prohibition, presented in these works, but it will also contribute to the debate by focusing on less philosophical and more practical, real-life consequences of the “war.” By using the latest statistical data, it will link the prohibition to some of the most pressing issues in the criminal justice system: Overcrowded prisons, and overburdened courts and distracted police.

This thesis seeks answers to the following research questions:

What are the key issues that libertarians have with each component of the criminal justice system in the United States? What solutions do they propose and what is their reasoning? Do libertarian proposals have a chance to be adopted?

The following hypotheses are based on the preliminary research and findings:

- 1) Libertarians can and do share some goals with other political actors, but their reasoning is different and is based on different set of values.
- 2) The ideology is fairly extremist, although not necessarily in the negative sense, and, even if opinions of libertarians on certain issues do differ slightly, their values scale is clearly definable and libertarians are generally very consistent and uniform in their ideals and proposals. It is therefore possible to accurately deduce and predict libertarian positions on various issues.

⁸ Timothy Lynch (Ed.), *After Prohibition: An Adult Approach to Drug Policies in the 21st Century* (Washington, D.C.: Cato Institute, 2000).

⁹ Daniel Lungen, “Legalization Would Be a Mistake,” in *After Prohibition*, 179–183.

- 3) In the United States, contrary to popular belief, libertarians are not an ideological compromise between Democrats and Republicans.
- 4) Libertarianism is gaining influence, but mostly indirectly—not through the Libertarian Party, which officially represent the ideology, but through the two major parties and various factions and movements.
- 5) Most libertarians do not criticize the existence of the criminal justice system *per se*, but focus on those individual issues which do not correspond with their ideals.

To answer the research questions and to verify the validity of the hypotheses, it is first necessary to introduce libertarianism as a life and a political philosophy. The first chapter analyzes the ideology by focusing on the main philosophical and political principles, examining the reasoning behind them and dealing with common misconceptions. This is achieved by identifying the key ideological concepts and their initial sources. Works of thinkers who are either considered libertarian, or admired and embraced by libertarians, are analyzed and serve as the main sources. Special emphasis is put on American contributions to the ideology. Even though some of the key concepts can be traced hundreds or even thousands years, and even though several important libertarian texts originated in Europe, American influence appears to be the most significant, and is especially relevant to the U.S. criminal justice system.

Libertarianism as a defined political movement in today's sense did not exist in 18th-and-19th-century America, although many philosophers and writers of that period introduced ideas, principles and concepts adopted by modern libertarians. Origins of libertarian ideals can be found in works of social Darwinists, individualists, individual anarchists, transcendentalists and other American philosophers. In the 20th century, especially after World War II, libertarianism evolved into a complex theory no longer built on separate ideas. The first chapter also introduces some of the more contemporary thinkers who focused on integrated theories, e.g. Murray Rothbard, or those who enriched the ideology with new concepts, like Ayn Rand with her philosophy of objectivism and the non-aggression principle. Libertarian thinkers who explained and analyzed libertarian positions in specific fields, like economist David Friedman or non-interventionist Frank Chodorov, are introduced as well.

Many articles and essays of these 20th-century philosophers and thinkers are especially relevant when linking libertarianism to criminal justice.

The second chapter provides evidence that the presented debate is not theoretical, or at least not entirely theoretical. It attempts to analyze the actual libertarian influence on contemporary U.S. politics. First, this chapter categorizes libertarians in relation to the two major American parties. Then, it deals both with the U.S. Libertarian Party, which represents an ideological purity, and with libertarian influence in the two major parties, Democratic and Republican. Special emphasis is put on the Tea Party movement, which is conservative, rather than libertarian, but which promotes many libertarian ideals and might have enough power to succeed in elections and put them in effect. Programs and statements of the various parties, groups, movements and factions are analyzed and compared to the theoretical base in Chapter 1 and to the specific proposals which will be introduced in Chapter 3, so that their relationship to libertarianism can be assessed. Evidence of the libertarian influence will be mostly based on statistical data, e.g. election results or voter registration.

The third chapter is pivotal and analyzes issues which libertarians have with the criminal justice system. Its structure follows the standard and generally accepted structure of the system itself, dealing with criminal law and its enforcement through policing, courts and corrections. The chapter analyzes both the libertarian critique of the key issues in the criminal justice system, and the proposed solutions. It will also present libertarian perspective on some of the famous concepts used in the administration of criminal justice, like Herbert L. Packer's "Two Models of the Criminal Process" or James Q. Wilson's and George L. Kelling's "Broken Windows Theory."

The issues were selected, for the most part, based on the importance attributed to them by libertarians, but also by other political players and criminal justice experts. Libertarian reasoning, whether provided in the concrete statements or not, will be analyzed, and then compared to and complemented by the ideological foundation provided in the first chapter.

While debates and criticism of the libertarian concepts are introduced, this thesis does not evaluate them politically or ethically. For example, legalization of all drugs and control substances might have side effects like an increase in the number

of addicts. These and other evaluations are too complex to be discussed here and are subjects of other research, which is noted where applicable and possible.

The analysis of current trends in the popularity of the Libertarian Party and general libertarian influence may serve as an indicator of future development; however, too many variables exist, so this work does not intend to forecast future outcomes.

The goal of this thesis is to help readers to gain understanding of libertarianism and its current positions on the political scene in the United States; understand libertarian values, ideals, priorities and reasoning; know what their issues with the U.S. criminal justice system are and the changes they propose; and to apply a libertarian perspective to practically any other issue.

1. The Philosophy of Libertarianism

While the primary intent of this thesis is to examine libertarian solutions and policy proposals related to issues in the U.S. criminal justice system, it is necessary to introduce the reader to libertarianism as a whole. To analyze libertarian ideas, we first have to fully comprehend libertarian philosophy—not necessarily criticize or appraise it, but to understand the rationale and to learn or deduce their desired goals.

It appears that libertarianism is “simple.” The key idea, as the name suggests, is a commitment to a nearly total supremacy of liberty. However, it may not be as simple to derive from this dogma the political goals of libertarians, or what exceptions or limits they permit. That is examined in the following subchapters, including the misconceptions libertarians often face.

The chapter examines personal, political and economic views of libertarians. It must be noted that these aspects are by no means separate—on the contrary, in fact. Personal ideals tend to affect political preferences, politics itself is largely, though not exclusively, about economy, and the libertarian inclination to free market is largely based on the same principles as their personal beliefs, and vice versa. For practical purposes, though, these components of the philosophy are analyzed individually, where possible.

1.1 Life Philosophy: Liberty above All

The third chapter of this thesis discusses the individual libertarian points and proposals. An analysis of arguments of all participants in the debate often demonstrates a substantial difference in personal values. It would be insufficient to simply state that, to a libertarian, the most important and fundamental value in life is “liberty,” even though it is, in fact, true. Abstract terms require explanation, especially if we uncompromisingly declare that they are the supreme value of a whole philosophy.

Libertarian perception of liberty is based on individualism, which derives from concepts like self-ownership, independence or self-reliance. Relationships between individuals and the society should be based purely on voluntary association. In addition, although libertarians are not violent, and, in fact, often criticize government

actions as institutionalized violence, they do not necessarily adhere to non-violence principle. Generally, they prefer non-aggression.

Let us examine these principles closely, including the limits which libertarians themselves impose on them.

1.1.1 A Person as an Individual

There is a meme circulating the Internet, saying that “Libertarians [are] diligently plotting to take over the World [sic] and leave you alone.”¹⁰ It nicely illustrates libertarian perception of individualism.

You cannot kill, you cannot harm, you cannot steal or commit fraud, but, otherwise, you do as you please. In other words: One’s liberty ends where liberty of others begins. This one sentence covers all regulations and all rights of an individual, and it will be a crucial part of the argument when discussing legislation. One thing is missing: obligations. According to libertarians, respect towards other people’s liberty is basically the only “rule” which a person should be forced to follow. One’s obligations to the society are virtually non-existent, as will be discussed shortly.

In practical terms, should the libertarian principles rule, this translates to the right to be left alone. The idea is not new and may be easily traced to Europe, to the Enlightenment or the beginnings of classical economic liberalism in the 17th and 18th century, notably to John Locke. It was applied to individual rights by one of the great 19th-century American thinkers, William Graham Sumner. In his 1884 book *What Social Classes Owe to Each Other*, he wrote:

Society needs first of all to be freed from these meddlers—that is, to be let alone. Here we are, then, once more back at the old doctrine—Laissez faire. Let us translate it into blunt English, and it will read, Mind your own business. It is nothing but the doctrine of liberty. Let every man be happy in his own way. If his sphere of action and interest impinges on that of any other man, there will have to be compromise and adjustment.¹¹

¹⁰ “Libertarians. Diligently plotting to take over the World and leave you alone,” *Zazzle.com on Pinterest*, accessed February 16, 2015, <https://www.pinterest.com/pin/75224256250142937/>.

¹¹ William Graham Sumner, *What Social Classes Owe to Each Other* (Auburn, AL, USA: Ludwig von Mises Institute, 1934), 104.

Libertarians base the right to be left alone and do as one pleases on the concept of self-ownership, authorship of which is granted to American thinker Josiah Warren. More than forty years before Sumner, he introduced the “natural sovereignty of the Individual”¹²—an exclusive right of a person to control his or her own body and life.

Others, i.e. Ralph Waldo Emerson, call individualism not only a right, but a virtue. In his famous essay “Self-Reliance”, he directly warns against conformity:

What is the aboriginal Self, on which a universal reliance may be grounded? [...] The inquiry leads us to that source, at once the essence of genius, of virtue, and of life, which we call Spontaneity or Instinct. [...] Society is a joint-stock company, in which the members agree [...] to surrender the liberty and culture of the eater. The virtue in most request is conformity. Self-reliance is its aversion. [...] Whoso would be a man, must be a nonconformist.¹³

An important part of self-ownership and related concepts are property rights. Libertarians represented in real-life politics are strong proponents of private (and personal) property. Private property belongs to an individual, and it is the individual only who decides how it will, or will not, be used and handled.

The last important principle related to individual and property rights is non-aggression. A popular version of the above-mentioned quote says that “your liberty to swing your fists ends where my nose begins”.¹⁴ While that might suggest that libertarians incline toward non-violence, this is not really accurate, since non-violence is usually understood as a complete abstention from violence, even for the purpose of self-defense. Libertarians, on the other hand, generally consider violence justifiable when facing aggression. The principle was formally introduced by Ayn Rand in 1961:

¹² Josiah Warren, “Manifesto: A Libertarian Document,” *Anarchy Archives: An Online Research Center on the History and Theory of Anarchism*, originally published 1841, accessed February 22, 2015, http://dwardmac.pitzer.edu/anarchist_archives/bright/warren/warrenmanifesto/pages/6.html.

¹³ Ralph Waldo Emerson, “Essays: First Series: Self-Reliance (1847 edition),” *Wikisource.org*, accessed February 22, 2015, https://en.wikisource.org/wiki/Essays:_First_Series/Self-Reliance.

¹⁴ “Your Liberty To Swing Your Fist Ends Just Where My Nose Begins,” *Quote Investigator: Exploring the Origins of Quotations*, accessed April 1, 2015, <http://quoteinvestigator.com/2011/10/15/liberty-fist-nose/>.

[N]o man may *initiate* the use of physical force against others. No man—or group or society or government—has the right to assume the role of a criminal and initiate the use of physical compulsion against any man. Men have the right to use physical force *only* in retaliation and *only* against those who initiate its use. The ethical principle involved is simple and clear-cut: it is the difference between murder and self-defense. A holdup man seeks to gain a value, wealth, by killing his victim; the victim does not grow richer by killing a holdup man. The principle is: no man may obtain any values from others by resorting to physical force.¹⁵
(Italics in original)

Libertarians adopted and support this principle. Murray N. Rothbard wrote several years after Rand that

“[I]ibertarianism holds that the only proper role of violence is to defend person and property against violence, that any use of violence that goes beyond such just defense is itself aggressive, unjust, and criminal. [...Everyone] should be free of violent invasion, should be free to do as he sees fit, except invade the person or property of another.”¹⁶ (Italics in original)

1.1.2 The Society and Moral Obligations

Liberty to do as you please, with the aforementioned minimalistic exceptions, is reflected in the way libertarians treat society—not as one homogenous group with specific characteristics, yearnings, rights, goals etc., but rather as a collection of individuals who “happen” to live in the same place at the same time, be it a town, a country or a planet.

The gender or race or age or sexual orientation are not a factor; but “a fact” and “a private matter.” Libertarians either do not care, or at least do not feel that any interference with most of other people’s private matters is desirable and justifiable. For example, a libertarian may personally feel appalled by the idea of same-sex relationship but, on his or her values scale, one person’s preference or opinion about other people’s behavior is far lower than the liberty of others to do as they please. Murray Rothbard continues: “What a person *does* with his or her life is vital and important, but is simply irrelevant to libertarianism.”¹⁷

¹⁵ Ayn Rand and Nathaniel Branden, *The Virtue of Selfishness: A New Concept of Egoism* (New York: New American Library, 1964), 28–29.

¹⁶ Murray N. Rothbard, “Myth and Truth About Libertarianism,” *LewRockwell.com*, accessed March 16, 2015, <http://archive.lewrockwell.com/rothbard/rothbard168.html>.

¹⁷ *Ibid.*

No one is obliged to interact with others. No one is obliged to help others when they need it, either. Solidarity and charity may be valuable and valued, help and selflessness may be appreciated, but neither is enforced. While most libertarians by no means encourage people to live like Carl Barks' and Walt Disney's Scrooge McDuck—in a vault full of accumulated wealth, shielded from the needy society—they most definitely see it as an individual right to do so. The existence of this right is clear and universally accepted by libertarians. Many of them argue, when judging the appropriateness or morality of such behavior, that it is in fact moral, or “not immoral”. That does not mean that libertarians want to behave like this, nor that they despise charitable options. They merely reserve the right to be selfish.

Judgment-free explanations of this philosophy are based on the principle of rational egoism, or rational selfishness: “The promotion of one’s own interests is always in accordance with reason.”¹⁸ In other words, being selfish is supposedly reasonable, period, and it is not relevant whether it is good or bad.

Some libertarians actually defend rational egoism as moral, *ethical* egoism. An important proponent of both rational and ethical egoism was Ayn Rand, who is widely known for developing Objectivism, a highly individualistic philosophical system to which many libertarians and conservatives relate, since it openly promotes, *inter alia*, both rational self-interest and laissez-faire capitalism. Rand defines Objectivism with the following words: “My philosophy, in essence, is the concept of man as a heroic being, with his own happiness as the moral purpose of his life, with productive achievement as his noblest activity, and reason as his only absolute.”¹⁹ She rejected the notion that selfishness is some sort of a “sin,” and argues that

“[i]n popular usage, the word ‘selfishness’ is a synonym of evil; the image it conjures is of a murderous brute who tramples over piles of corpses to achieve his own ends [...] Yet the exact meaning and dictionary definition [...] is: concern with one’s own interests. This concept does not include a moral evaluation; [...] It is the] ethics of altruism [which] has created the image of the brute [...].”²⁰

¹⁸ Alexander Moseley, “Egoism: Rational Egoism,” *Internet Encyclopedia of Philosophy*, accessed March 16, 2015, <http://www.iep.utm.edu/egoism/#SH2a>.

¹⁹ Ayn Rand, *Atlas Shrugged (35th anniversary ed.)* (New York: Dutton, 1992), 1170–1171.

²⁰ Ayn Rand and Nathaniel Branden, *The Virtue of Selfishness: A New Concept of Egoism*, 5.

Rand was extremely critical of altruism and its supposed moral superiority:

Do not confuse altruism with kindness, good will or respect for the rights of others. [...] Do not hide behind such superficialities as whether you should or should not give a dime to a beggar. That is not the issue. The issue is whether you *do* or do *not* have the right to exist *without* giving him that dime. The issue is whether you must keep buying your life, dime by dime, from any beggar who might choose to approach you. The issue is whether the need of others is the first mortgage on your life and the moral purpose of your existence. The issue is whether man is to be regarded as a sacrificial animal. Any man of self-esteem will answer: “*No.*” Altruism says: “*Yes.*”²¹
(Italics in original)

The key sentence would be “That is not the issue.” Rand does not say whether you should or should not help the beggar, she insists, though, that you have a right not to help him, and that not helping him is not immoral. Slight nuances like this are easily overlooked or misinterpreted, which can be harmful to the general perception of libertarians. The reasons for (un)popularity of libertarians are not that relevant for this thesis, though. More important is the way in which these supposed libertarian rights “to not help” and “to be left alone” reflect on their perception of the government.

1.2 Libertarianism in Real-Life Politics

What should and what should not be the role of the state, that is the question. Libertarians do not debate “how big” the government should be. They focus on the opposite and rather discuss how small and limited it should get. We have established that libertarians are extreme individualists and examined closely the related concepts. They reflect in political philosophy as the principal of self-governance.

Libertarians have several issues with any government in general. First, they mostly claim that it is unnecessary. If people are generally allowed to do as they please and interaction/association is voluntary, including trade/economic relations, no government needs to interfere.²² Second, libertarians view the government

²¹ Ayn Rand, *Philosophy, Who Needs It* (Indianapolis: Bobbs-Merrill, 1982), 61.

²² One example is “marriage privatization.” Abandoning a state-recognized marriage would undoubtedly be a solution to the “gay marriage controversy”, but the idea does not seem to be very popular (or even considered) by anyone else than libertarians, anarchists and similar movements.

as—according to Rothbard—“the institution of organized violence,”²³ since it can legally use force in pursuit of its goals, or against those whose behavior is perceived unacceptable. That is especially problematic when the government enforces policies which libertarians consider unnecessary, unjust or wrong.

Examples of three such policies are provided in Episode 3 of “Justice: What’s the Right Thing to Do,” a Harvard University’s course led by Professor Michael J. Sandel:

- 1) No Paternalist Legislation (“Passing laws that protect people from themselves; Seatbelt laws, for example [...] It may be a good thing if people wear seatbelts, but it should be up to them. And the state, the government, has no business coercing them, us, to wear seatbelts by law.”) [...]
- 2) No Morals Legislation (“That’s also a violation of the right to liberty. [A classic example] have been laws that prevent sexual intimacy between gays and lesbians. The libertarian says: ‘Nobody else is harmed, nobody else’s rights are violated, so the state should get out of the business entirely of trying to promote virtue or to enact morals legislation.’”) [...]
- 3) No Redistribution of Income from Rich to Poor. [...] ²⁴

The last point, in the libertarian view, can be—under specific conditions introduced by Robert Nozick—compared to institutionalized theft.²⁵ Reasoning behind that claim is apparent by now, since it was established earlier that, according to libertarians, all charity should be voluntary. Professor Sandel was talking about redistribution through involuntary taxes. While libertarians undoubtedly prefer private entities over public ones, including charitable organizations, one can assume they would not object to redistribution from state-operated funds based on voluntary contributions.

However, redistribution is not the only libertarian issue with taxes. Dick Armey, former House Majority Leader for the Republicans, said that “there is only one legitimate reason to levy your tax, and that’s to raise money. Anything you try to accomplish with taxes other than raising money is a corruption. [...] you’re trying to redistribute income [...] and [then there’s] social engineering.”²⁶

²³ Murray N. Rothbard, “Myth and Truth About Libertarianism,” *LewRockwell.com*, accessed March 16, 2015, <http://archive.lewrockwell.com/rothbard/rothbard168.html>.

²⁴ Michael J. Sandel, *Justice: What's The Right Thing To Do? Episode 03: "FREE TO CHOOSE"*, YouTube video, 55:07, September 8, 2009, <http://youtu.be/Qw411w0rkjs>.

²⁵ Ibid.

²⁶ Penn Jillette and Teller, *Penn & Teller: Bullshit! Season 7, Episode 7: Taxes*, Television, Showtime Network, August 5, 2009.

Pulitzer-Prize winning journalist David Cay Johnston elaborates on the issue of social engineering: “Congress uses the tax code to affect all sorts of human behavior. We encourage you to get married, [...] to buy a house, to save for a retirement, we discourage you from drinking alcohol or smoking cigarettes.”²⁷ These particular encouragements are accomplished by various tax breaks and subsidies, and discouragement by indirect taxes such as excise tax. Simply put, libertarians believe that these pressures may have their place in family or personal relationships, but not in the relations between the state and the individual.

As for legislation, libertarians do not have problems only with Sandel’s examples of paternalist and morals legislation, but with regulations in general. They do not believe in effectiveness, sustainability and enforceability of regulations—that is important if one wants to understand libertarian critique of selected parts of U.S. legislation, outlined in the third chapter. In other words, libertarians go much further than to just claim that the state has in most cases no *right* to regulate individuals. The state *should not* do that, but, more importantly, the state is *not able* to do that. This criticism will be demonstrated by libertarian critique of the War on Drugs. What is there left for the government to do? According to some, protect, and maybe to provide the most basic functions. According to a few others, nothing.

1.2.1 Small Government or No Government?

Libertarians are generally linked to the ideals of a minimal state. On that libertarians agree. What they discuss among themselves is the actual “size” of the ideal/accepted state.

Ideology advocating a minimal state, which most but not all libertarians tend to support, is called minarchism or minimal statism.²⁸ Unlike anarchists, minarchists accept the legitimacy of a state, but only in a minimal form, sometimes referred to as a “night-watchman” state.²⁹

The role of such a state consists purely of protecting citizens from harm caused by others and their property from theft or damage, including frauds, breaches of contracts etc. To ensure such protection, the government has the most basic institutions

²⁷ Ibid.

²⁸ Long and Machan, Preface.

²⁹ Ludwig von Mises, *Liberalism* (New York: The Foundation for Economic Education, 1985), 37.

at its disposal: the military, and the criminal justice system. Existence of executive, judicial and legislative branches of the government is generally not opposed by libertarians, and although other institutions might be privatized, many minarchists do not oppose public emergency and rescue services, such as ambulances and fire departments.

Many libertarians would allow any state projects that are “actually” beneficial for every citizen, e.g. building infrastructure.³⁰ That is a crucial part of any economic environment which, according to libertarians, states should not regulate, but may help create. Libertarians naturally do not oppose basic economic essentials such as “currency”, but severely limit the ways in which states manage money, and they do not necessarily agree with currently employed concepts like fiat money.³¹

While most libertarians accept that some form of state may or should exist, and do not call for its abolishment, many if not most libertarians do not oppose anarchy, or believe it could work. Josiah Warren’s concept of self-ownership, an integral part of individualism, has been broadened by his intellectual follower Benjamin Tucker. It is Warren who is known as “the first American anarchist.”³² He and Tucker are thinkers recognized as “individual anarchists”, but it was Tucker who used self-ownership to argue against the existence of governments in his 1888 essay “State Socialism and Anarchism:”

If the individual has a right to govern himself, all external government is tyranny. Hence the necessity of abolishing the State. This was the logical conclusion to which Warren and [Pierre-Joseph] Proudhon were forced, and it became the fundamental article of their political philosophy. It is the doctrine which Proudhon named An-archism [sic], a word derived from the Greek, and meaning, not necessarily absence of order, as is generally supposed, but an absence of rule. The Anarchists are simply unterrified Jeffersonian Democrats. They believe that “the best government is that which governs least,” and that that which governs least is no government at all.”³³

³⁰ Although even some very famous libertarians argue for infrastructure privatization, and others at least consider the idea. One of the more prominent ones is David Friedman in his book *The Machinery of Freedom: Guide to a Radical Capitalism*.

³¹ Unlike commodity money (actual valuable objects) or representative money (a claim on commodity), fiat money is a currency whose value is declared by government and not actually backed by anything.

³² Jeff Riggenbach, “Josiah Warren: The First American Anarchist,” *Mises Daily* (*Ludwig von Mises Institute*), February 25, 2011), <http://mises.org/daily/5067/Josiah-Warren-The-First-American-Anarchist>

³³ Benjamin R. Tucker, “State Socialism and Anarchism: How Far They Agree, and Wherein They Differ,” *Molinari Institute*, originally published 1888, accessed February 21, 2015, <http://praxeology.net/BT-SSA.htm>.

Transcendentalist Henry David Thoreau held virtually the same ultimate goal: “That government is best which governs not at all”; and when men are prepared for it, that will be the kind of government which they will have.”³⁴ It should be noted that Thoreau did not argue for revolution, but wanted to achieve this ideal gradually: “I ask for, not at once no government, but at once a better government.”³⁵

1.2.2 Foreign Policy of Non-Interventionism

Libertarian adherence to the non-aggression principle reflects on their views on international policy. Non-interventionism can be interpreted as a policy of not interfering with non-trade dealings of other countries without their consent, if one’s country is not originally involved, i.e. bound by a treaty. Stricter interpretation refuses even the aforementioned treaties and alliances, in order to avoid conflicts that are not directly threatening one’s country. It is obvious that only large and strong countries can afford having such a policy—smaller countries sometimes form alliances to prevent stronger, bigger and potentially aggressive countries from attacking and conquering them. In a broader sense, non-interventionism also relates to anti-imperialism and anti-expansionism, because it refuses concepts of “spreading democracy and American values” against the will of the targeted countries.

A prominent non-interventionist was Frank Chodorov, who, *inter alia*, objected to U.S. involvement in World Wars (prior to Pearl Harbor), stating that “[...] no war is justified; that no war benefits the people; that war is an instrument whereby the haves increase their hold on the have-nots; that war destroys liberty.”³⁶

Not all libertarian thinkers are strictly non-interventionist. One good example is Barry Goldwater, a conservative Republican, 1964 presidential candidate and the author of a famous book *The Conscience of a Conservative*. By some considered

³⁴ Henry David Thoreau, “On the Duty of Civil Disobedience: [1849, original title: Resistance to Civil Government],” *Constitution.org*, accessed February 21, 2015, <http://www.constitution.org/civ/civildis.htm>.

³⁵ Henry David Thoreau, *Ibid.*

³⁶ Frank Chodorov, “When War Comes,” *The School of Cooperative Individualism*, reprinted from *The Freeman*, November, 1938, accessed March 15, 2015, http://www.cooperativeindividualism.org/chodorov-frank_when-war-comes-1938.html.

“America's first libertarian politician,”³⁷ he was in favor of intervening in Europe and Asia in various ways in order to prevent communist expansion.

Non-aggression is two-sided, though, and while an attack is inadmissible, defense may be of the most extreme nature. In the libertarian view, countries, like people, are justified when “killing in defense,” or, in this case, waging a defensive war. For that reason, libertarians do not generally oppose the existence of the military, although they do not necessarily oppose the idea of its privatization either.

1.2.3 Unregulated/Free-Market Economy

Libertarians are strong proponents of classical laissez-faire liberalism and market economy. They promote free international trade and the international division of labor, being influenced by classical liberalism of Frédéric Bastiat and rejecting protectionism in any form. Those concepts have been explained, defended and criticized countless times. Only those thinkers and schools that are recognized by libertarians are to be mentioned here.

Probably the most well-known and appraised libertarian economist is Milton Friedman, leader of the Chicago School of Economics, known for his research on consumption analysis and monetary theory. The second major economic school, not only from a libertarian perspective, is the Austrian School. Among its major representatives are Henry Hazlitt, whose notable work includes his 1946 *Economics in One Lesson*³⁸ or 1959 *The Failure of 'New Economics'*,³⁹ a criticism of Keynes' theories; or Murray Rothbard, quoted in the previous subchapters. Rothbard is the founder of anarcho-capitalism, also known as “free-market anarchism”, whose main idea is giving up *all* state-operated matters including law enforcement or courts to the private sector. Another extremely relevant economist is Ludwig von Mises, a champion of classical liberalism and praxeology, methodology that regards people's behavior as intentional/purposeful—concept vital for theories regarding consumer's preferences and utility.

³⁷ Robert W. Poole, Jr., “In memoriam: Barry Goldwater,” *Reason*, August 1, 1998, <http://www.thefreelibrary.com/In+memoriam%3A+Barry+Goldwater.-a020954419>.

³⁸ Henry Hazlitt, *Economics in One Lesson* (Michigan: Harper & Brothers, 1946).

³⁹ Henry Hazlitt, *The Failure of the “New Economics”*: *An Analysis of the Keynesian Fallacies* (Oakland: Van Nostrand, 1959).

This libertarian adherence to free-market represents their perception of the government as an unnecessary, ineffective or downright harmful institution. In addition, libertarians apply the principles of unregulated market to interpersonal relations, e.g. to voluntary contracts between employers (demand) and employees (supply), and therefore oppose government intervention in many social issues.

1.3 Chapter 1 Conclusion

It should be clear by now that libertarianism is, at least in theory, not only easy to define, but also rather easy to misinterpret. It is not difficult to understand (not necessarily to agree with) the reasoning behind libertarian ideals, and apply the ideology to almost any issue. Libertarians have an extremely clear ideological hierarchy: liberty above all.

The phrase “extremely clear” in the previous sentence was not chosen by accident, because it should also be apparent by now that libertarians are extremists. Not in a pejorative, but rather in a descriptive sense. The idea that liberty, defined and understood through individualism, is superior to everything can be quite controversial. Many people would strongly disagree that a human life or concepts such as “common good” or “greater good” are not more valuable than one’s individual freedom *per se*. According to libertarians, only liberty itself, in this case liberty of another individual, can negate one’s individual liberty. No one else should be allowed to do so, whether another person, a small group of neighbors or legislation passed by a 99 per cent democratic majority.

According to most libertarians, government is considered mostly unnecessary, and often even harmful or downright aggressive and violent. It should interfere neither with individuals, nor with society as a whole, nor with the economy, nor with other countries, with some minor exceptions. Despite that, most libertarians agree that government should exist, in a very limited form. It should serve only to protect individuals against each other and provide basic functions of a state. What are the “basic functions,” is a matter of discussion. Most libertarians would agree, though, that one of them is a justice system. Their critique of the current state of the justice system, proposed solutions and counter-opinions of their opponents is the main topic of this thesis, examined in the third chapter.

2. Real-Life Libertarian Influence on U.S. Politics

This thesis argues that libertarians are getting stronger and more influential. While neither the party, nor individual libertarians are currently very powerful, election results show that they are getting more popular. This chapter attempts to assess libertarian influence and the trends in voters' support for libertarian ideas, with special emphasis on the criminal justice system.

Libertarian influence may not be apparent, as neither the political ideology nor the life philosophy are by any means “mainstream”, as is true of most political parties and movements that openly base their programs on libertarian concepts and ideals. However, a few influential politicians with strong constituencies can, to some extent, be considered libertarian, or at least promote some libertarian proposals.

One of the hypotheses argues that the actual libertarian influence on politics in the United States is mostly indirect. Preliminary research indicated that the U.S. Libertarian Party is not powerful, and rather than by “infiltrating” the Congress through this third party, many libertarians form factions in the two major parties. This chapter explains how libertarianism differs from the two American mainstream political ideologies, looks at Libertarian Party's successes in elections, and examines the influence of libertarians in the Republican and the Democratic Parties.

2.1 Libertarianism and the American Political Terminology

To analyze and understand libertarian influence, it is first necessary to place libertarians on the U.S. political map. Direct comparison with the two leading parties—Democrats and Republicans, both well-known and understood—will later allow at least partially to answer the following questions: Which libertarian ideas might get support from one of the larger parties? What type of a voter might consider voting for libertarians, whether members of the actual Libertarian Party, the “Libertarians” with capital “L”, or members of other parties with an inclination to libertarian philosophy? Which values do libertarians share with other political philosophies, and where do they differ?

In the United States, libertarians are often described as “socially liberal and fiscally conservative”⁴⁰—a blend between Democrats, “Liberals”, and Republicans, “Conservatives”. Such classification is misleading and inaccurate.⁴¹

In the first chapter, libertarianism was described as a fairly “simple” philosophy, virtually entirely derived from the single principle of personal liberty. While even that required an explanation, the philosophy is relatively universal; it can be described in simple terms and comprehended by non-scholars.

The term “fiscal conservatism” is also rather clear. The ideals of limited government spending, balanced budgets and avoidance of foreign debt, as the term is generally interpreted, are recognized and promoted both by Republicans and libertarians, although perhaps for different reasons.⁴² Libertarians, however, hold much more extreme views than an average Republican; they may be called fiscally ultraconservative.

The problem lies with the word “liberal”. The term liberal/liberalism is perceived very inconsistently around the world. Since the focus of this thesis is on the United States of America, “American” terminology must be examined.

In the United States, the so-called liberals are often comparable to European socialists, or “social democrats”, even though their beliefs are not uniform and some are more centrist. However, many base their ideology on strong central (federal) government, promote social welfare, government regulation and intervention, social and economic equality, and other related concepts. That is mostly the complete opposite of libertarianism.

Libertarians do not necessarily aim to preserve existing conditions in the society or to restore traditional ones. They are not necessarily conservative, but that does not make them the opposite—(the American) liberals or progressives. Libertarians do not try to control, change or influence people—their ideal is an individual

⁴⁰ “Background on Principles & Values,” *OnTheIssues.org – Candidates on the Issues*, accessed January 25, 2015, http://www.ontheissues.org/Background_Principles+_Values.htm.

⁴¹ The very same source of the definition, project OnTheIssues.org, promptly adds that “Libertarian Party members dislike that phrase.” (Ibid.)

⁴² Interestingly, American politicians with strong religious beliefs do not prefer the leftist approach; enforcing their agenda through “the big government.” Dr. Matthew Sutton, author of *American Apocalypse: A History of Modern Evangelicalism*, (Cambridge: Harvard University Press, 2014), indicated that preference of the small governing body of the so-called “Religious Right” is actually based on Biblical texts. In his book, he presents and examines evidence supporting this statement.

who is left to do as he or she pleases, with certain minimal limits. Moreover, libertarians are proponents of equal treatment by a government. Their perception of equality is never based on putting people into groups, whether formed on the basis of race, gender, beliefs, sexual orientation, social and economic status or other factors. Discrimination of various minorities is non-libertarian, but so is favoritism toward them to make up for perceived injustice. While libertarians are not necessarily loners—they may cherish existence of groups and communities—they claim that “all human relationships should be voluntary”.⁴³

Moreover, even if libertarians shared some ideals with American Liberals—and they surely do—they would not attempt to promote or enforce them through government, as was explained in detail in the previous chapter.

For these reasons, the label “socially liberal” could be extremely misleading when using the American terminology. Terms like “socially neutral” or even “socially apathetic” are more suitable. The results may sometimes, at least partially, be the same, but the means are most certainly not, and neither are the values behind them.

In Europe, on the other hand, the terms liberal and libertarian are often used interchangeably. Some may even claim that there is no need for the word libertarianism in Europe; it’s liberalism, no matter how Americans supposedly “misuse” the word. However, this thesis aims to prove that libertarianism is more individualistic and expresses stronger resentment towards governments, while classical liberals mainly oppose government’s intervention in economic matters. In a way, libertarians bring classical liberalism further and apply the *laissez faire* principle to everything, not only trade.

2.2 U.S. Libertarian Party: The Tiny, Third Largest Party

Even if this chapter ultimately aims to prove that libertarians gain influence through other, non-libertarian parties—mostly the Republican Party and the Tea Party movement—the actual U.S. Libertarian Party cannot be omitted.

⁴³ David Boaz, *Libertarianism: A Primer* (New York: Free Press, 1997), 2.

Based on the party's principles, platform and positions, it can be concluded that at least the party's official rhetoric is ideologically pure—consistent and fully in accordance with libertarian theory introduced in the previous chapter.⁴⁴

The party was founded in 1971 in Colorado and has been continuously active nationwide ever since.⁴⁵ With 399,302 registered voters, it is the third largest political party in the United States.⁴⁶ However, few statistics illustrate the strength of the American two-party system better than this one, since this third largest party accounts for merely 0.38% of all registered voters.⁴⁷

As of April 2015, no members of the U.S. Libertarian party were serving in the United States Congress. Nationwide, only 147 party members were holding elected offices: 52 partisan, and 95 nonpartisan, mostly in city councils, school boards etc.⁴⁸

2.2.1 Election Trends: Growing Popularity

Libertarian candidates have never won Senate or House of Representative seats; however, election results for both of them show a long-term growing trend. Moreover, in 2014, Libertarians received 1.98% of popular votes, which is almost double the average of 1.05% in the previous elections, those of 2004–2012.⁴⁹

When analyzing the presidential elections, absolute figures are also interesting, and more relevant. The electoral system effectively eliminates small parties from competition. The proportional system would be unfavorable enough for libertarians, but in the states where the winner gets all the electors, which is 48 out of 50 states, libertarians simply do not stand a chance. Other researchers attempt to provide the answer to the question whether the system works, if a candidate can get 37,577,185 votes:

⁴⁴ “Introduction,” *Libertarian Party*, accessed March 25, 2015, <http://www.lp.org/introduction/what-is-the-libertarian-party>. “Platform,” *Libertarian Party*, accessed March 25, 2015, <http://www.lp.org/platform>. “Issues,” *Libertarian Party*, accessed March 25, 2015, <http://www.lp.org/issues>.

⁴⁵ “Our History,” *Libertarian Party*, accessed March 25, 2015, <http://www.lp.org/our-history>.

⁴⁶ Richard Winger, “October 2014 Registration Totals,” *Ballot Access News* 30, No. 7 (December 1, 2014), <http://ballot-access.org/2014/12/26/december-2014-ballot-access-news-print-edition/>.

⁴⁷ *Ibid.*

⁴⁸ “Elected Officials,” *Libertarian Party*, accessed March 25, 2015, <http://www.lp.org/candidates/elected-officials>.

⁴⁹ Federal Election Commission, “U.S. House of Representatives Results,” in *Federal Elections 2004, 2006, 2008, 2010, 2012* (Washington, D.C.: Federal Election Commission, 2005–2013). <http://www.fec.gov/pubrec/electionresults.shtml>.

i.e. 40.56%, but only 13 electors, i.e. 2.4% of the total; or even win with less popular votes.⁵⁰ Practically speaking, the probability of a libertarian win is virtually non-existent and change in the near future seems improbable.

That is well known, but Libertarian presidential candidate Gary Johnson still received 1,275,940 votes in 2012 election.⁵¹ Even though they only account for 0.99%⁵² of the total and even though it would be too simplistic to assume that each vote came from a citizen who is a convinced libertarian, such “gesture” from over a million people is noteworthy. Moreover, this result is a huge step for libertarians, who received only 0.40% of popular votes in presidential elections of 2008, 0.32% in 2004 and 0.36% in 2000.⁵³

2.3 Libertarian Republicans

As was discussed earlier, libertarians are closer to Republicans than to Democrats, because they share the general aversion to big government. Where the two ideologies do not agree, is social and religious conservatism, or rather its enforcement.

Nothing indicates that libertarianism could not co-exist with religion. However, even though libertarians may privately adhere to religious moral principles, we established in Chapter 2 that they would never base legislation on morality or enforce it in any way. Separation of church and state is crucial in libertarian view, since ideology has no place in their perception of ideal government. According to libertarians, neither enforcing laws that criminalize violence and theft, nor providing the basic

⁵⁰ Federal Election Commission, “Official General Election Results for United States President November 6, 1984,” in *Federal Elections 84* (Washington, D.C.: Federal Election Commission, 1985), 15.

Federal Election Commission, “2000 Presidential Electoral and Popular Vote,” in *Federal Elections 2000* (Washington, D.C.: Federal Election Commission, 2001).
<http://www.fec.gov/pubrec/fe2000/elecpop.htm>.

⁵¹ Federal Election Commission, “2012 Presidential Popular Vote Summary For All Candidates Listed on at Least One State Ballot,” in *Federal Elections 2012* (Washington, D.C.: Federal Election Commission, 2013), <http://www.fec.gov/pubrec/fe2012/2012pres.pdf>, 5.

⁵² *ibid.*

⁵³ Federal Election Commission, “Official General Election Results for United States President November 4, 2008,” in *Federal Elections 2008* (Washington, D.C.: Federal Election Commission, 2009), 27–40.
 Federal Election Commission, “Official General Election Results for United States President November 2, 2004,” in *Federal Elections 2004* (Washington, D.C.: Federal Election Commission, 2005), 27–39.
 Federal Election Commission, “2000 Presidential Popular Vote Summary For All Candidates Listed on at Least One State Ballot,” in *Federal Elections 2000* (Washington, D.C.: Federal Election Commission, 2001). <http://www.fec.gov/pubrec/fe2000/prespop.htm>.

government functions requires ideology, and its implementation would infringe on individual rights of those who would disagree with the state.

2.3.1 Libertarian Factions in the Republican Party

Some Republicans with strong adherence to libertarian principles formed the Republican Liberty Caucus, a “grassroots membership organization dedicated to working within the Republican Party to advance the principles of individual rights, limited government and free markets.”⁵⁴ The positions of the caucus are truly extremely libertarian, and even include such die-hard proposals as marriage privatization. There do not appear to be any traces of religious conservatism in the statement:

We support the separation of church and state as a safeguard of religious liberty and freedom of belief. We support an end to any government role in the definition or administration of marriage. Government involvement should be limited to the registration of civil contracts of union. [...] No law should deny, disparage or restrict the right of every person to privacy, freedom of travel, association, possession of substances, or adult consensual behaviors. [...] We favor civil discussion of [the question of abortion], but take no position on the merits of conflicting legal, ethical, and religious viewpoints on either side.⁵⁵

The caucus publishes its own “Liberty Index,” ranking the members of the Senate and the House of Representatives according to what the caucus perceives as a support for limited government.⁵⁶ Some of the candidates who were endorsed by the caucus are currently serving as elected officials. A few of them have been officially affiliated with the caucus, including several state senators and representatives.⁵⁷ There have even been cases where the caucus denounced the official Republican Party platform.⁵⁸ However, the caucus and its opinions by no means represent a majority of the party and its influence is limited.

⁵⁴ “About the Republican Liberty Caucus,” *Republican Liberty Caucus*, accessed April 26, 2015, <http://www.rlc.org/about-republican-liberty-caucus>.

⁵⁵ “Statement of Principles & Positions,” *Republican Liberty Caucus*, accessed April 26, 2015, <http://www.rlc.org/principles>.

⁵⁶ “Liberty Index,” *Republican Liberty Caucus*, accessed April 26, 2015, <http://www.rlc.org/liberty-index>.

⁵⁷ “Elected Officials,” *Republican Liberty Caucus*, accessed April 26, 2015, <http://www.rlc.org/elected-officials>.

⁵⁸ Doug Mataconis, “Texas Republican Liberty Caucus Denounces Anti-Gay Planks In Party Platform,” *United Liberty*, June 26, 2010, <http://www.unitedliberty.org/articles/6195-texas-republican-liberty-caucus-denounces-anti-gay-planks-in-party-platform>.

The Liberty Caucus is not the only libertarian representative of the libertarian wing within the Republican Party, though. Two other vocal political organizations, Campaign for Liberty and Young Americans for Liberty, are directly linked to former Republican Congressman Ron Paul, who is probably the best example of libertarian influence on the Republican Party.

2.3.2 Ron Paul's Campaign and Influence

Ron Paul has been a “libertarian icon” for decades and belongs to the most well-known proponents of the ideology, although he tends to be more conservative in those areas where libertarianism leaves a little flexibility, e.g. in issues of abortion or immigration. He served a total of 23 years as a member of the U.S. House of Representatives, representing Texas, he ran for president as a nominee of the Libertarian Party in 1988 and was a candidate in the Republican primaries in 2008 and 2012.

Paul is a Distinguished Counselor to the Mises Institute,⁵⁹ and author of many books and essays concerning libertarianism and fiscal policies. He has been promoting freedoms and liberties expressed in the U.S. Constitution and has been consistent in his political positions.⁶⁰ As part of his 2008 presidential campaign, he founded Campaign for Liberty, a political organization built on libertarian principles:

Our stances on other issues can be deduced from these general principles. Our country is ailing. [...] The remedy is so simple and attractive: a return to the principles our Founders taught us. Respect for the Constitution, the rule of law, individual liberty, sound money, and a noninterventionist foreign policy constitute the foundation of the Campaign for Liberty.⁶¹

Ron Paul also endorsed Young Americans for Liberty, another libertarian organization, a direct successor of grassroots college organizations who supported Paul's

⁵⁹ “Profiles: Ron Paul,” *Mises Institute*, accessed April 21, 2015, <https://mises.org/profile/ron-paul>.

⁶⁰ “Ron Paul's Voting Records,” *Project Vote Smart*, accessed April 21, 2015, <http://votesmart.org/candidate/key-votes/296/ron-paul#.VVRbxo7tBc>.

⁶¹ “About Campaign for Liberty: Statement of Principles,” *Campaign for Liberty*, accessed April 21, 2015, <http://www.campaignforliberty.org/about/>.

candidacy in 2012 as “Students for Ron Paul.”⁶² The organization’s statement of principles is a textbook representation of libertarianism:

WE, as Young Americans for Liberty believe: that government is the negation of liberty; that voluntary action is the only ethical behavior; that respect for the individual's property is fundamental to a peaceful society; that violent action is only warranted in defense of one's property; that the individual owns his/her body and is therefore responsible for his/her actions; that society is a responsibility of the people, not the government.⁶³

In addition, Paul founded the Foundation for Rational Economics and Education in 1976.

Ron Paul is relevant to this thesis for two reasons. Firstly, his positions are in accordance with libertarian theory, including even the controversial ones, such as abolition of the so-called War on Drugs. Chapter 3 presents it as one of the key issues that libertarians have with the U.S. criminal justice system, and Paul has been consistently promoting its abolition:

Government should not compel or prohibit any personal activity when that activity poses danger to that individual alone. Drinking and smoking marijuana is one thing, but driving recklessly under the influence is quite another. When an individual threatens the lives of others, there is a role for government to restrain that violence.⁶⁴

Secondly, Paul is well known and influential. In 2007, he raised \$6 million in one day by setting up a website for direct contribution to his campaign, “a technique that became known as the ‘money bomb.’”⁶⁵ In 2012, even though he ultimately did not win the Republican presidential nomination, he received more than 2 million popular votes, approximately 11%, and secured 185 delegate votes at the 2012 Republican National Convention.⁶⁶ Because of his strong constituency, some of his proposals got the attention of the party’s majority.

⁶² “Ron Paul Endorses Young Americans for Liberty,” *Young Americans for Liberty*, accessed April 21, 2015, <http://www.yaliberty.org/about/ronpaul>.

⁶³ “Mission,” *Young Americans for Liberty*, accessed April 21, 2015, <http://www.yaliberty.org/about/mission>.

⁶⁴ Ron Paul, *Liberty Defined: 50 Essential Issues That Affect Our Freedom* (New York City: Grand Central Publishing, 2011), PDF e-book, 106.

⁶⁵ Kenneth P. Vogel, “‘Money bomb’: Ron Paul raises \$6 million in 24-hour period,” *USA Today*, December 17, 2007, http://usatoday30.usatoday.com/news/politics/election2008/2007-12-17-ronpaul-fundraising_N.htm.

⁶⁶ “Republican Convention 2012,” *Green Papers*, accessed April 22, 2015, <http://www.thegreenpapers.com/P12/R>.

2.3.3 The Tea Party Movement and Rand Paul

The Tea Party movement, grassroots organization without centralized leadership—not an actual political party—plays a special role in the Republican Party. The movement is not libertarian, and it is in fact not even officially Republican. It accurately claims to be conservative, but the member base includes libertarians, mostly because the movement appears to focus primarily on fiscal, not social conservatism. “Our millions of members consist of Republicans, Democrats, Libertarians, and Independents who identify with the premises set forth by the U.S. Constitution [...]. We stand by the Constitution as inherently conservative.”⁶⁷ The Tea Party’s “15 Non-negotiable Core Beliefs” indicate that, despite its decentralism and lack of a single official program, the movement can be universally described as fiscally (ultra)conservative.⁶⁸

Most of these core beliefs are in accordance with either libertarianism, or “harmless” from the libertarian perspective. However, one may be potentially problematic: According to the Tea Party, “traditional family values are encouraged.”⁶⁹ Traditional family values, which we can assume means a marriage is between a man and a woman, is something in which a libertarian may believe—individual/personal conservatism is not “unlibertarian.” However, in the libertarian view, state does not exist to “encourage” certain sets of values, and the government’s treatment of all individuals, both traditional and non-traditional, must be the same.

Because the Tea Party is decentralized and lacks official guidelines, members and supporters may simply omit such points from their personal agendas. Conflict would arise only if the Tea Party wanted to enforce these core beliefs, e.g. through laws that would discriminate against “non-traditional” families, in which cases, libertarians ideologically object. Other than that, Tea Party’s fiscal conservatism and minimal statism can be appealing to many libertarians, and general social and/or religious conservatism, not reflected in laws, should be tolerable in libertarian views. As for election results and popularity, conservatism may in fact play into Tea Party’s cards: Many of those

⁶⁷ “About Us.” *Tea Party*. Accessed March 20, 2015. <http://www.teaparty.org/about-us>.

⁶⁸ Ibid.

⁶⁹ Ibid.

who think that libertarianism, due to its social neutrality, is too “free-spirited,” may gladly join the Tea Party’s ranks.

From the libertarian perspective, the most interesting politician linked to the Tea Party movement is Rand Paul, who announced in April 2015 his intention to run in the 2016 U.S. Presidential election. Paul claims to be “running for president to return [the] country to the principles of liberty and limited government.”⁷⁰ However, he is not fully libertarian in his views, and he does not claim to be: “I’m not a libertarian. I’m a libertarian Republican. I’m a constitutional conservative.”⁷¹ Paul is conservative, *inter alia*, in matters of marriage, where he opposes federal government’s intrusion in to what he believes is a state’s issue.⁷² He strongly opposes abortion.⁷³ We have established earlier that libertarians are divided when it comes to this issue—protection of life clashes with protection of mother’s sole ownership of her body. Paul’s position is therefore neither libertarian, nor “unlibertarian.”

What is definitely not libertarian is his position on drugs. Paul would not legalize drugs, although he promotes shorter sentences.⁷⁴ “I don’t want to encourage people to do it. I think even marijuana is a bad thing to do. [...] I don’t want to promote that but I also don’t want to put people in jail who make the mistake.”⁷⁵

Relevant for this thesis are Rand Paul’s proposals on criminal justice reform. Acts he proposed include, *inter alia*, Civil Rights Voting Restoration Act which “would restore the voting rights of every non-violent felon in the country [in] federal elections,” RESET Act which “re-classifies simple possession of controlled substances – very small amounts – as a misdemeanor rather than a low-level felony [and] also eliminates the crack-cocaine disparity,” or FAIR Act which deals with government

⁷⁰ “About Rand Paul,” *RandPaul.com*, accessed April 20, 2015, <http://www.randpaul.com/about>.

⁷¹ Peter Wallsten, “Sen. Rand Paul aggressively courting evangelicals to win over GOP establishment,” *The Washington Post*, May 12, 2013, http://www.washingtonpost.com/politics/sen-rand-paul-aggressively-courting-evangelicals-to-win-over-gop-establishment/2013/05/12/d917ccb4-b8af-11e2-b94c-b684dda07add_story_1.html.

⁷² Chris Wallace and Rand Paul, “Sen. Rand Paul on top congressional issues; pivotal moment in the battle over gay marriage,” *Fox News Sunday*, Fox News, aired March 24, 2013, transcript, <http://www.foxnews.com/transcript/2013/03/24/sen-rand-paul-top-congressional-issues-pivotal-moment-battle-over-gay-marriage/>.

⁷³ “Issues: Sanctity of Life,” *RandPaul.com*, accessed April 20, 2015, <http://www.randpaul.com/issue/sanctity-of-life>.

⁷⁴ Chris Wallace and Rand Paul, *Fox News Sunday*.

⁷⁵ *Ibid.*

forfeiture by “[ensuring] that the federal government would have to prove by clear and convincing evidence that seized property was being used for illegal purposes before it’s forfeited.”⁷⁶

We can conclude that, despite his prevailing conservatism on some issues, Rand Paul is generally “libertarian enough” and, as such, might get votes from libertarian voters who for any reason choose not to support a U.S. Libertarian Party candidate.

2.4 Libertarian Democrats

While individual Democrats may lean towards libertarian views in certain situations, libertarianism as a whole does not have a strong position in the party. A few members of the Democratic Party formed Democratic Freedom Caucus, the DFC, whose platform is mostly in accordance with the mainstream libertarian views, with two possible exceptions. They claim that “it is unjust to allow imports of foreign products made using slave labor” and that “[i]n the case of essential services, such as assistance for the needy, there should only be cuts in these services if adequate services can be provided by the non-government sector.”⁷⁷ While libertarians would mostly let people decide what they want to buy and from whom, and leave assistance and charity to be private and strictly voluntary, the platform as a whole can be described as borderline libertarian. Unlike the statement of principles of the Republican Liberty Caucus, which calls for repeals of specific laws, programs and government organizations, the DFC’s platform is less specific. It mostly describes conditions that are considered ideal, the changes are only implied.

The impact of this group on real-life politics is questionable. The “Elections” category on the group’s official website provides only one example of a successful campaign: The 2006 win of Mike Bozarth, the DFC state chair for Missouri, in a race for city council of St. Joseph, population 71,990.⁷⁸ The caucus occasionally endorses

⁷⁶ “Issues: Criminal Justice Reforms,” *RandPaul.com*, accessed April 20, 2015, <http://www.randpaul.com/issue/criminal-justice-reforms>.

⁷⁷ “DFC Platform,” *Democratic Freedom Caucus*, accessed April 26, 2015, <http://www.democraticfreedomcaucus.org/dfc-platform/>.

⁷⁸ “Elections,” *Democratic Freedom Caucus*, accessed April 26, 2015, <http://www.democraticfreedomcaucus.org/category/elections/>.

selected Democratic candidates, but does not seem to be very active, since as of April 2015, the last of these endorsements is more than one year old.⁷⁹

2.5 Chapter 2 Conclusion: Small, but Growing Influence

The current state of legislation is far from the libertarian ideal. That is true not only for the criminal justice system, but also for economic, monetary, fiscal, social, foreign and other policies. Neither election results nor other metrics of voters' preferences indicate that the situation will change drastically in the following months or years.

However, this chapter presented evidence that even though libertarianism is not mainstream, its position is getting stronger. Voters' support for the U.S. Libertarian Party, albeit weak, shows growing trend in all types elections, despite systemic barriers like the electoral system.

More importantly, libertarians are getting influential in bigger parties, both through organizations that form the libertarian wing in the Republican Party, and through the Tea Party movement. Former congressional representative and presidential candidate Ron Paul has been promoting libertarian ideals for decades and achieved significant success in his 2008 and 2012 campaigns. His son Rand Paul, more conservative in some issues, recently announced his candidacy in 2016 presidential elections. While not fully libertarian, his proposals, including those related to the criminal justice system, are mostly in accordance with libertarian theory.

⁷⁹ "Endorsements," *Democratic Freedom Caucus*, accessed April 26, 2015, <http://www.democraticfreedomcaucus.org/category/endorsements/>.

3. Libertarian Critique of the U.S. Criminal Justice System

This chapter examines various issues in the U.S. criminal justice system, and solutions/criticism which libertarians offer or which may apply.

A Criminal justice system (CJS) can be defined as criminal law and its enforcement. Criminal law simply means legislation, its enforcement covers three main components of the CJS: Policing, Courts and Corrections. Policing does not involve only police, but all other law enforcement agencies whose purpose is to deliver a suspected criminal to court. The intended purpose of courts is to decide whether the evidence against the suspect is sufficient to proclaim him or her guilty of a crime. The main actors, aside from the plaintiff and the defendant, are the judge, the prosecutor and the defense attorney. Corrections deal with the suspects who were found guilty and include punishments, e.g. incarceration, or some form of supervision, e.g. parole or probation.

While libertarians do have issues with integral parts of each component of the criminal justice system, we will see that the key problems are unsurprisingly connected to legislation. Libertarians would decriminalize many types of behavior which are now punishable by law. It must be noted that, in this case, “decriminalization” does not mean merely tolerating some form or degree of activity that used to be criminal, e.g. possessing certain amount of formerly illegal substance. In the libertarian perspective and for purposes of this thesis, “decriminalization” equals “legalization”, and the formerly illicit behavior would not be regulated at all, unless it would directly interfere with situations that even libertarians would regulate. For example, being intoxicated would not be illegal/criminal *per se*, but driving while intoxicated⁸⁰ would, since it poses a direct threat to well-being of others.

The so-called “War on Drugs” is used as a case study, because it nicely illustrates how libertarian critique of existing laws—prohibition of drug use—reflects on all levels of the criminal justice system. While drug prohibition is costly and not very effective, the thesis will not attempt to determine whether the “war” is still worth waging. That is a question of personal values and ideology.

⁸⁰ For our purposes, “Driving while intoxicated/impaired (DWI)” is synonymous to “Driving under the influence (DUI)” and other related crimes, even though the specific legislation differs from place to place.

3.1 Laws and Regulations: What Should Be Criminal?

As seen earlier, libertarians, as economic liberals, would mostly not regulate the economy. As proponents of voluntary association and believer in applicability of free-market principles to personal relations, they do not see necessity of having e.g. the labor code, possibly with the exception of regulating matters such as child's labor. Even most libertarians acknowledge, though, that criminal laws must exist, since the criminal justice system is a crucial part of even a minimal state. However, their ideals differ greatly from how the system currently works.

Libertarians would only criminalize behavior that involves assault on other people's lives, health, individual freedom or property. According to the U.S. Libertarian Party, "[c]riminal laws should be limited to violation of the rights of others through force or fraud, or deliberate actions that place others involuntarily at significant risk of harm."⁸¹

The current system is much stricter. Many laws and regulations exist for reasons that are purely political or ideological. As was established in Chapter 1, libertarians refuse paternalistic and moralistic laws. To that, laws enforcing "order" can be added, as well as laws criminalizing behavior which is simply not "liked" by a majority, and laws supposedly serving some "higher purpose", i.e. common or greater good. The U.S. Libertarian Party "favor[s] the repeal of all laws creating 'crimes' without victims, such as the use of drugs for medicinal or recreational purposes, since only actions that infringe on the rights of others can properly be termed crimes."⁸² Drugs were not mentioned accidentally in the party platform—opposition to drug prohibition not only illustrates the ideological position of libertarians, but can also, to some extent, serve as the "root of all evil," as will be examined in a separate case study at the end of this chapter. Other types of laws viewed as undesirable by libertarians are examined in the following subchapters.

⁸¹ "Libertarian Party 2014 Platform: 1.6 Crime and Justice," *Libertarian party*, June 2014, <http://www.lp.org/platform#1.6>.

⁸² *Ibid.*

3.1.1 Crimes against Morality

The most illustrative example of morals legislation are laws which regulate sexual relations between consenting adults or sexual behavior of an individual. By “adult” in sexual relations, we mean any person who has reached the age of consent, which must be somehow defined, by consent is meant the capacity and opportunity to refuse the act—both mental and physical.

The consent of said persons is the only relevant issue for libertarians:

Government has no business intruding into people's bedrooms. This doesn't mean we must personally approve of the sexual behaviors of others. It simply means that as long as the participants are consenting adults, no one has the right to use the force of government laws to try to stop or punish them. [...] Every day millions of adult Americans agree to make love. There is no justification for throwing them in jail. These are peaceful voluntary agreements [...]. A tiny fraction of these involve money. Criminal penalties do not stop prostitution. [...] Decriminalize sex, and let it be a private affair.⁸³

As long as no one is somehow coerced to participate, libertarians do not feel that they have a right to interfere or dictate “who does what with whom”. Currently, the system does not reflect these libertarian views. One concrete example is prostitution. While forcing someone into prostitution would naturally be illegal, the practice could be a business like any other. The same applies to pornography and regulation of other sex-related businesses. Manuel Possolo examines how “[s]tate and federal courts are currently divided as to the constitutionality of laws banning the sale or distribution of devices used for sexual stimulation, or sexual devices—what some call ‘sex toys,’”⁸⁴ after the Supreme Court’s decision in *Lawrence v. Texas*, which struck down sodomy laws in several states and made same-sex activity legal every U.S. state. The decision directly mentions morality:

JUSTICE STEVENS concluded that (1) the fact a State's governing majority has traditionally viewed a particular practice as *immoral* is not a sufficient reason for upholding a law prohibiting the practice, and (2) individual decisions concerning the intimacies of physical relationships, even when not intended to produce offspring, are a form of “liberty” protected by due process.⁸⁵
(Italics added)

⁸³ “Libertarian FAQ,” *Frequently Asked Questions*, last modified May 11, 1998, <http://www.faqs.org/faqs/libertarian/faq/>.

⁸⁴ Manuel Possolo, “Morals Legislation after *Lawrence*: Can States Criminalize the Sale Of Sexual Devices?” *Stanford Law Review* 65, no. 3 (March 2013): 580.

⁸⁵ *Lawrence v. Texas*, syllabus, 539 U.S. 558 (2003).

To a libertarian, that goes without saying. While libertarians do not necessarily agree with appropriateness of many aforementioned practices, their criminalization is out of the question.

3.1.2 Being Orderly and “Nice”

Most people might argue that orderly places are nice to look at, that the presence of “vagrants”, “punks”, and various other “potential troublemakers” may be disturbing to more sensitive residents, or, to change the subject completely, that certain types of behavior, e.g. racism, are absolutely undesirable and have no place in the society. Most libertarians might agree, but they would still argue against criminalization of any of the aforementioned and other similar phenomena. A few examples follow.

Abuse of loitering laws is examined closely in the Section 3.2 which deals with policing. In any case, libertarian limits of what is criminal clearly state that libertarians absolutely do not consider it a crime to “linger or hang around in a public place or business where one has no particular or legal purpose.”⁸⁶ A person can be expelled from private property by the owner/caretaker for any reason, and cannot, for example, block the entry to a store, since that would interfere with someone else’s property rights. However, according to libertarians, no one should be allowed to harass them for simply being in a public space without an apparent reason. The same applies to vagrancy and begging. Unless the person is aggressive, they should not be persecuted in any way.

Racism should also be mentioned, because it is a controversial topic and the libertarian perspective may greatly influence public perception of the ideology. While some racists may claim to be libertarians and support libertarian ideas, research and presented evidence indicate that the ideology is not racist. The basis of racism seems in fact rather “unlibertarian”, because it goes directly against individualism as the key ideological concept of libertarians. Race and ethnicity should be as irrelevant to an individualist as another person’s height. In words of Ron Paul:

⁸⁶ *Law.com: Legal Dictionary*, s.v. “loiter,” accessed April 15, 2015, <http://dictionary.law.com/Default.aspx?selected=1180>.

[L]ibertarianism is the enemy of all racism, because racism is a collectivist idea is that you put people in categories. You say, "Well, Blacks belong here, Whites here, and women here." Well, we don't see people in form-- or gays. You don't have rights because you're gays, or women, or minorities. You have rights because you're an individual. So, we see people strictly as individuals. And we get these individuals in a natural way. So, it's exactly opposite of all collectivism. And it's absolutely anti-racism, because we don't see in those terms.⁸⁷

Despite that, libertarians still do not claim that they have a right to forbid others to be racist. The state must treat everyone equally, but individuals and private businesses may be as racist as they like. It simply does not matter to libertarians whether it is nice or right or rational.

People have the right, in libertarian theory, to be racist. Libertarians are in favour of free speech and would be against any laws that would make the expression of a racist view illegal. A libertarian would also permit a company to have a sign on its door saying "No black people admitted." Likewise a company would be permitted to advertise for jobs saying "It is our company policy not to employ black people."⁸⁸

The same logic also applies to the so-called anti-discrimination, anti-racist or positive-discrimination laws, and even for hate-speech laws, as long as they do not consist of actual threats and other "credible" violations of free speech. Because the state must treat each individual equally and because it cannot interfere to this extent with the private sector, there is, according to libertarians, simply no place for such legislation.

3.1.3 The Will of the Majority

Laws that criminalize simply "what the majority does not like" can serve as a separate example, even though the principle is the same as in the case of morality, orderliness and "niceness". These laws represent the most fundamental and probably the most controversial obstacle which libertarians face: Contemporary democracy.

Libertarians are not democrats. [...They] deny that anyone or any group has a right to rule over other peaceful (non-coercive) citizens - whether they are in the majority or minority at any given time. If stealing is wrong for an individual to do, it is still

⁸⁷ Bill Moyers and Ron Paul, "Bill Moyers talks with Ron Paul," *Bill Moyers Journal*, PBS, aired January 4, 2008, transcript, <http://www.pbs.org/moyers/journal/01042008/transcript2.html>.

⁸⁸ Michael Ezra, "Racism at the Libertarian Alliance," *Harry's place*, last modified May 23, 2014, <http://hurryupharry.org/2014/05/23/racism-at-the-libertarian-alliance/>.

wrong when conducted by a large group or by a majority vote. [...] Libertarians uphold the right of the peaceful individual to self-ownership and private property against any who would violate this right - even a majority.⁸⁹

The idea that majority has no right to rule over minorities simply because it is a majority is not new. John Stuart Mill wrote in 1869 that “[i]f all mankind minus one, were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind.”⁹⁰ It is the general long-term increase in the amount of regulation that makes it relevant to libertarians.

A real-life example would be a ban on smoking in private places, such as restaurants or bars. According to libertarians, smoking bans may have their place in public spaces which are owned/maintained by the state—paid for by tax revenues, ergo at least partially by citizens. As for privately owned restaurants, no one has a right to enter and demand that conditions there are accommodated to suit him or her. In the libertarian view, visitors, as well as employees, must either endure the conditions, or socialize/work elsewhere. Even if the owner was the only living smoker in the world, he would still have the right to smoke in his own restaurant. They would either go bankrupt, or people would tolerate them—any legislation is deemed unnecessary, and, in fact, unjust.⁹¹

3.2 Policing

Libertarians are inherently polarized when it comes to the police. On one hand, the vast majority of libertarians agree that police are necessary, even though some actually do question their constitutionality.⁹² Libertarians cherish self-reliance and they may even agree with the concept of survival of the fittest. Although they have nothing against the idea of voluntary help to others, they generally do not think that it is an obligation. It is important to note, however, that the libertarian perception of the survival of the fittest is not based on strength and aggression. Non-aggression is a clear value and attacking

⁸⁹ Sam Wells, “What a Libertarian Is - and Is Not,” *Laissez-Fairerepublic.com*, accessed April 16, 2015, <http://laissez-fairerepublic.com/libertar.htm>.

⁹⁰ Jon Stuart Mill, *On Liberty* (The Project Gutenberg E-Book: 2011), 30–31.

⁹¹ “The Smoking Ban,” *Libertarian View*, last modified April 21, 2011, <http://www.libertarianview.co.uk/current-affairs/smoking-ban>.

⁹² Roger Roots, “Are Cops Constitutional?” *Constitution Society* (originally published in Seton Hall Constitutional L.J. 2001, 685), accessed April 4, 2015, <http://www.constitution.org/lrev/roots/cops.htm>.

others or their property is never justifiable. Because there have always been thieves and violent people, someone needs to provide necessary protection, and, simply stated, police seem more practical than private bodyguards.

On the other hand, while police can be privatized—keeping the costs divided among their “clients”—in real life, they are mostly government employees. That is potentially problematic for a libertarian, since we have established that libertarian perception of what should be criminal, and thus punishable by the justice system, is not synonymous with what the current government actually declares to be criminal. While the police still remain necessary according to libertarians, they are basically government employees, and, as such, need to be limited in their powers. The following sections will examine selected issues of policing, including what powers the police should have in the libertarian view, and what limits should be imposed.

3.2.1 Role of the Police: Broken Windows and Neighborhood Safety

What should be the role of the police? Many people would say “to protect the law and to enforce order,” however, most libertarians would only agree with the first part.

Numerous laws which criminalize disorder have been briefly introduced. The intensity of their enforcement is influenced, *inter alia*, by the famous broken windows theory of James Q. Wilson and George L. Kelling, which includes orderliness as one of the key prerequisites of maintaining lawfulness. The authors argued that ignoring “the little things,” such as broken windows, sends a signal that disorder is tolerated, subsequently leading to more disorder and crime.⁹³

Should police activity on the street be shaped, in important ways, by the standards of the neighborhood rather than by the rules of the state? Over the past two decades [i.e. 1960s and 1970s], the shift of police from order-maintenance to law enforcement has brought them increasingly under the influence of legal restrictions, provoked by media complaints and enforced by court decisions and departmental orders. As a consequence, the order maintenance functions of the police are now governed by rules developed to control police relations with suspected criminals.⁹⁴

⁹³ James Q. Wilson and George L. Kelling, “Broken Windows: The police and neighborhood safety,” *The Atlantic* (March, 1982).

⁹⁴ *Ibid.*, 5.

In the very last paragraph of the original study, Wilson and Kelling compare community policing to “physicians [...who] recognize the importance of fostering health rather than simply treating illness.”⁹⁵ The theory was tested in New York City to some extent, and the results are actually impressive—focusing on petty crimes like fare-beating, and implementing policies of e.g. keeping the subway cars clean, did work and crime rates dropped,⁹⁶ even if other factors might have played a role.

Libertarians can essentially relate to those aspects of the theory. Because they would basically only criminalize what is now considered serious crimes, i.e. violent and property crimes, including fraud, thoroughness would be more than desirable—after all, breaking someone’s window is an attack on his property, something deserving of punishment. The same applies to damaging public property.

However, what the state, ergo the police, cannot do in libertarian view, is to force someone to repair their own windows, just because it damages the community’s orderly look. Community life is not undesirable, but voluntary association takes precedence over “common good.” In other words, Libertarians do not believe that the state has a right to enforce order, even if it was universally definable and desirable. While authoritarian regimes often define what is orderly or e.g. regulate people’s looks, libertarians do not feel the right to interfere, unless a person or their property is directly threatened. They would therefore forbid the state—and the police—to do so.

3.2.2 Limits to Police Authority: Barriers to a Police State

Since libertarians do recognize certain “real” crimes, the police need powers to enforce law. Research does not indicate that libertarians would strongly oppose use of force by the police, or even deadly force. The right of an officer to defend himself is extended to the obligation to defend others and the right to temporarily limit citizen’s freedoms, if he or she has a probable cause. If procedures are followed, citizens must submit, and, in fact, they must submit even if the procedures are not followed—they can complain later.

⁹⁵ Ibid., 8.

⁹⁶ Malcolm Gladwell, “The Power of Context (Part One): Bernie Goetz and the Rise and Fall of New York City Crime,” in *The Tipping Point: How Little Things Can Make a Big Difference* (New York, 2000), 133–169.

The procedures are the key, because as we explained above, the police are still an extended arm of the government, and, as such, are not trusted by libertarians. Respect is offered, but demanded as well, and laws regulating possible police harassment are considered necessary. First, libertarians want to eliminate laws which criminalize loitering, vagrancy and other activities which police may use as an excuse to stop, search and even arrest a person.⁹⁷ Second, they challenge any perceived abuses of power by the police and exercise their constitutional rights whenever they feel harassed.⁹⁸

Libertarians do notice and object to police militarization, where SWAT teams, as well as the regular police force, use military-style equipment—weapons, gear, vehicles—obtained as part of the efforts of the Department of Defense to reutilize military equipment, rather than to destroy it. Moreover, the term police militarization also includes the use of military style-tactics, which many view as unacceptable when dealing with civilian and domestic population:

[B]lurring the lines between civilian policing and military action is dangerous, because soldiers and police have fundamentally different roles. Soldiers aim outward, at the nation's external enemies. Civil rights and due process don't matter much, because enemies in wartime aren't entitled to those. Nor are soldiers expected to be politically accountable to the people they shoot. But police turn their attention inward.⁹⁹

Libertarians also point out that the equipment is expensive and its purchase must have been heavily funded. As Gene Healy noted: “If we share the Founders’ concern about domestic militarization, maybe we should stop subsidizing it.”¹⁰⁰

3.3 Courts

Research does not indicate that libertarians would oppose the concept of impartial courts where judges and juries review presented evidence and subsequently decide whether the defendant is guilty “beyond a reasonable doubt.” They still have issues

⁹⁷ “Libertarian Party 2014 Platform...,” *Libertarian Party*.

⁹⁸ Austin Petersen, “10 rules for dealing with police (VIDEO),” *The Libertarian Republic*, September 9, 2013, <http://thelibertarianrepublic.com/10-rules-dealing-police/>.

⁹⁹ Glenn Harlan Reynolds, “Police problem is unaccountable attitude: Column,” *USA Today*, August 26, 2014, <http://www.usatoday.com/story/opinion/2014/08/25/police-militarization-accountability-review-military-equipment-swat-column/14576871/>.

¹⁰⁰ Gene Healy, “Fight against militarized police is a culture war worth having,” *Washington Examiner*, August 25, 2014, <http://www.washingtonexaminer.com/fight-against-militarized-police-is-a-culture-war-worth-having/article/2552413>.

with the judicial level of the criminal justice system, though. The judicial level includes judges, prosecutors, defense attorneys and the procedures related to a trial process. Libertarian criticism is partially conceptual, and partially it relates to other levels of the criminal justice system system, mainly legislation.

This section examines libertarian preference of due process, their proposals regarding overburdened courts and defense attorneys, as well as criticism of plea bargaining as an improper substitute for a trial.

3.3.1 Due Process and Presumption of Innocence

Assume that a person is suspected of committing an act that even libertarians consider to be “criminal.” Assume also that he or she was apprehended by the police in the “right way,” legally and respectfully, and brought before a court. What should the criminal process look like? Libertarians again have to choose between two rather opposing principles: Their desire for safety and justice, for a world where persons and their property are safe, a world where criminals are punished, victims reimbursed and justice served; and the fact that they are giving the state, which they oppose so much, the power to take property, freedom or maybe even life from a person found guilty.

What evidence is sufficient when so much is at stake? Herbert Packer introduced in 1964 his famous two models of the criminal process: Crime Control Model and Due Process Model. The first model is “based on the proposition that the repression of criminal conduct is by far the most important function to be performed by the criminal process.”¹⁰¹ The process is speedy, efficient, informal and uniform, and the rate of apprehension and conviction is high.¹⁰² It also operates with a concept which Packer calls “the presumption of guilt.” This notion is not as bad as it may appear, as it is simply a theoretical condition allowing for the desired efficiency and speediness.

The supposition [of the presumption of guilt] is that the screening processes operated by police and the prosecutor are reliable indicators of probable guilt. Once a man has been investigated without being found to be probably innocent, or, to put it differently, once a determination has been made that there is enough evidence of guilt so that he should be held for further action rather than released from the process, then all subsequent activity directed toward him is based on the view that he is probably guilty. [...] The presumption of guilt is not,

¹⁰¹ Herbert L. Packer, “Two Models of the Criminal Process,” *University of Pennsylvania Law Review* 113, no. 1 (November 1964): 9.

¹⁰² *Ibid.*, 10.

of course, a thing. [...] It simply exemplifies a complex of attitudes, a mood. [...] It is an expression of] confidence in the reliability of informal administrative factfinding activities that take place in the early stages of the criminal process, [while] the remaining stages of the process can be relatively perfunctory without any loss in operating efficiency.¹⁰³

The presumption of innocence, on the other hand, declares that “until there has been an adjudication of guilt by an authority legally competent to make such an adjudication, the suspect is to be treated [...] as if his guilt is an open question.”¹⁰⁴ The two concepts are not opposite, but merely different. “The presumption of innocence is a direction to officials how they are to proceed, not a prediction of outcome. [It is] normative and legal, [while] the presumption of guilt is descriptive and factual.”¹⁰⁵

While the idea of speedy and effective system seems appealing, there is one critical reason for libertarians to prefer the another model, Due Process Model, which “does not deny the social desirability of repressing crime [but] looks very much like an obstacle course.”¹⁰⁶ Proponents of the Due Process Model, including libertarians, have trouble with the aforementioned “expression of confidence” in the system. Witnesses’ recollections may be incorrect or biased, confessions and admissions forced... The possibility of human error is very real. “If efficiency suggests shortcuts around reliability, [it] must be rejected. The aim of the process is at least as much to protect the factually innocent as it is to convict the factually guilty.”¹⁰⁷ Packer stresses the difference between “factual” and “legal” guilt and mentions some of the safeguards that prevent the authorities from misusing their powers. These include concepts of jurisdiction, venue, state of limitations, double jeopardy, criminal responsibility etc.¹⁰⁸

For libertarians, the potential price for each error in the system—wrongful conviction—is too high, since the subsequent punishment attacks their most prized values. When a person is found guilty, the government can take away their most fundamental freedoms, as well as their property. For this reason, while it is not ideal, a libertarian would rather see a factually guilty criminal walk free, than an innocent person suffer for crimes they did not commit. Understanding of this libertarian preference

¹⁰³ Ibid., 11.

¹⁰⁴ Ibid., 12.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid., 13.

¹⁰⁷ Ibid., 15.

¹⁰⁸ Ibid., 16–17.

is especially important when it comes to instances where the sentence cannot be reversed and the victim of the error reimbursed, namely the death penalty. These instances are discussed later.

3.3.2 Crowded Courts and Overburdened Public Defenders

The supposed “overcriminalization” is responsible for the fact that courts may be forced to deal with too many cases to do a good job. Naturally, while this thesis discusses the criminal justice system, this is not an issue limited to criminal cases, as Philip Howard points out:

[D]aily dealings became infected with debilitating legal fear. [...] Evidence is everywhere. [...] Seesaws, diving boards, and jungle gyms are nearly extinct. Teachers will no longer put an arm around a crying child. Doctors practice defensive medicine, wasting billions in unnecessary tests and procedures. Personnel reviews are so scripted as to be meaningless. My own firm has a list of questions I'm not allowed to ask, including this sinister question, bulging with innuendo: ‘Where are you from?’ Trivial warning labels plaster the landscape: ‘Caution: Contents are hot.’¹⁰⁹

Whether it is a right thing to do or not, the libertarian proposal to decriminalize many acts that are criminal now would relieve courts of their duty to deal with related cases. “About 56,000 felony cases were filed in the 75 largest counties during May 2009. Drug defendants, 33%, represented the largest category of felony defendants [...]”¹¹⁰ That third would potentially disappear if libertarian standards of criminal behavior were adopted.

Moreover, many of the defendants cannot afford an attorney, in which case public defenders are appointed. The fact that it is costly would not be such a big issue for libertarians in this case, since public defenders serve as a protection, defense against the state. The problem is that even if they do not doubt the best intentions of public defenders to do their job well, it would seem improbable that there are enough of them with enough time to carefully review each of the potential tens of thousands of cases.

¹⁰⁹ Philip K. Howard, “Judges: The Problem and Solution to America's Judiciary Mess,” *The Atlantic*, June 6, 2012, <http://www.theatlantic.com/national/archive/2012/06/judges-the-problem-and-solution-to-americas-judiciary-mess/258131/>.

¹¹⁰ Brian A. Reaves, “State Court Processing Statistics: Felony Defendants in Large Urban Counties, 2009 - Statistical Tables,” *Bureau of Justice Statistics*, December 2013, page 2 of PDF Statistical Tables. <http://www.bjs.gov/content/pub/pdf/fdluc09.pdf>.

3.3.3 Plea Bargaining

While overburdened courts and defenders are merely a side effect of what libertarians dislike about legislation, not an issue *per se*, the so-called plea bargaining is the proverbial thorn in libertarians' side.

A plea bargain or deal is a situation where the defendant “voluntarily” pleads guilty, waiving his right for a trial, in exchange for lesser punishment, e.g. reduced sentence. For example, instead of going through a lengthy trial, the district/state attorney may offer a person charged with murder removal of the death sentence in exchange for a guilty plea. If the arrested person pleads possession of illegal drug, they will not be charged with intent to distribute, etc. This is no theoretical; rarely-used practice; in fact, 97.1% of convictions in 2014 were plea bargains, with only 2.9% going to trial.¹¹¹

Libertarians question the constitutionality of these deals and insist on the superiority of jury trials. Timothy Lynch, director of the Cato Institute's Project on Criminal Justice, argues as follows:

This standard operating procedure was not contemplated by the Framers. [...] In fact, the Constitution says ‘the Trial of all Crimes, except in Cases of Impeachment; shall be by Jury.’ It is evident that jury trials were supposed to play a central role in the administration of American criminal justice. [...] No one ever proposed a radical restructuring of the criminal justice system, one that would replace jury trials with a supposedly superior system of charge-and-sentence bargaining. Like the growth of government in general, plea bargaining slowly crept into and eventually grew to dominate the system.¹¹²

Secondly, the article mentions the negative impact which plea bargains have on the defendant's ability make the right decision. It often looks reasonable to plead guilty, even if the defendant is innocent, because the outcome of a trial is unsure.¹¹³ Libertarians, as well as other critiques of plea bargaining, blame the supposedly overcomplicated legal system.

¹¹¹ Unites States Sentencing Commission, *2014 Sourcebook of Federal Sentencing Statistics*, Figure C.

¹¹² Timothy Lynch, “The Devil's Bargain: How Plea Agreements, Never Contemplated by the Framers, Undermine Justice,” *Cato Institue*, originally published in July 2011 issue of *Reason*, <http://www.cato.org/publications/commentary/devils-bargain-how-plea-agreements-never-contemplated-framers-undermine-justice>.

¹¹³ *Ibid.*

Justice has become so procedurally elaborate that only the rich can afford to get to trial. But even the rich won't take that risk, because prosecutors can game the sentencing guidelines so that an indictment could lead to decades in jail if you lose. Plea bargaining for a sentence of, say, six months looks irresistible, even if you believe you're innocent. Should prosecutors have this power of extortion?¹¹⁴

Libertarians also deny the argument that plea bargaining is, like the name suggest, a “contract”.¹¹⁵ As Erik Luna points out, “[a] libertarian critique of plea bargaining [...] might view the prosecutor as impermissibly trading in other people's rights without their consent.”¹¹⁶ The fact that the defendant cannot leave the criminal process or choose another “business partner,” i.e. another prosecutor, is another reason the free-market comparison seems faulty in the eyes of libertarians.¹¹⁷

3.4 Corrections

The libertarian approach to corrections is somewhat similar to their perception of the police. On one hand, crime exists, its victims must be protected and reimbursed and perpetrators need to be punished. On the other hand, as was explained earlier, most libertarians would without exaggeration view the state to be “mostly dispensable, but to some extent a necessary and/or tolerable evil.” Because this “enemy” is supposed to carry out the punishments and deprive people of their most valued possession, freedom and property, finding the right balance is crucial to libertarian ideology.

3.4.1 When “the Enemy” Punishes

Let us assume that a person is found guilty by an impartial judge and a jury, after evidence “beyond reasonable doubt” was provided. This “criminal” is sentenced via due process of law to some form of punishment. Libertarians are not aggressive and they prefer peaceful coexistence over quarrels, which does not necessarily mean that they refuse to become violent. Libertarianism does not have a universal rule for retaliation, though, and its extent is a matter of discussion among proponents of the ideology.

¹¹⁴ Philip K. Howard, “Judges...”

¹¹⁵ Robert E. Scott and William J. Stuntz, “Plea Bargaining as Contract,” *Yale Law Journal* 107, no. 1 (June 1992).

¹¹⁶ Erik Luna, “Traces of a Libertarian Theory of Punishment,” *Marquette Law Review* 91, no. 1 (2007): 284.

¹¹⁷ *Ibid.*, 286–287.

The best example is the death sentence, in both the literal, or legal, and in the figurative, civil, sense. In other words, the question is: Who is the executioner? While libertarians by no means oppose mercy, they also believe that, to some extent, killing an aggressor in self-defense is fully acceptable. The right of self-defense is also one of the reasons for the Libertarian Party to refuse regulation of gun ownership, while stressing the owner's responsibilities.¹¹⁸

The libertarian issue with the death sentence in the legal sense is again based on the fact that it gives the state too much power which can be potentially misused, and on the possibility of human error which would result in wrongful execution, too common to be ignored. Ethically, libertarians might not have a problem with executions, but the practical danger that an innocent person may be executed is one of the reasons many prominent libertarians, including former presidential candidates Ron Paul¹¹⁹ and Gary Johnson,¹²⁰ now oppose the death penalty. Moreover, even though it is not the primary issue, libertarians certainly complain about the extremely high costs of every death penalty case. Despite all that, the opposition to capital punishment is not universal among libertarians.

Libertarian opposition also appears in relation to other “cruel and unusual” punishments, not only the death penalty. An obvious problem is that perception of the words “cruel” or “unusual” is not universal. Sharia law, not practiced in the U.S., still uses limb amputation as a punishment, something that would be unthinkable in United States. Moreover, the perception of what is cruel and unusual has evolved greatly. In a brief history of Sing Sing Correctional Facility, Ted Conover uses an excerpt of Alexis de Tocqueville's mid-19th-century interview with Warden Elam Lynds to point out that whipping, use of which is now almost unimaginable in the U.S., used to be a standard practice.¹²¹ The full interview also reveals, though, that what we now consider relatively normal—solitary confinement—was not considered preferable:

¹¹⁸ “Issues: Gun Laws,” *Libertarian Party*, Accessed April 5, 2015, <https://www.lp.org/issues/gun-laws>.

¹¹⁹ “Paul on Capital Punishment,” *2012 Presidential Candidates*, Accessed April 10, 2015, <http://2012.presidential-candidates.org/Paul/Capital-Punishment.php>.

¹²⁰ “Johnson on Capital Punishment,” *2012 Presidential Candidates*, Accessed April 10, 2015, <http://2012.presidential-candidates.org/Johnson/Capital-Punishment.php>.

¹²¹ Ted Conover, *Newjack* (New York: Random House, 2000), 177.

[Elam Lynd:] I regard punishment by the whip as the most effective and at the same time as the most humane, for it never makes a man ill and compels the prisoners to lead an essentially healthy life. Solitary confinement on the other hand is often ineffective and almost always dangerous.¹²²

Reasonable legal consensus must be reached, but it can be concluded that libertarians would think twice before allowing the state to carry out punishments that cannot be reversed.

However, while we have established that libertarians define “crime” narrowly and their mistrust to government prevents them from seeking “excessive” punishments, Libertarian Party insists that, in one respect, the current system is not punishing criminals enough:

Libertarians would do more than just punish criminals. We would also make them pay restitution to their victims for the damage they've caused, including property loss, medical costs, pain, and suffering. If you are the victim of a crime, the criminal should fully compensate you for your loss.¹²³

The party is similarly stern in matters of crimes committed by juveniles. Libertarians promote responsibility for one’s own actions and despise violent crimes. While the ideology does not seem to oppose the social construct of legal adulthood, for example in matters of consent to sexual activity, drug use, voting etc., they do not see age as an objective and infallible way to determine universally whether people should or should not be held responsible for their actions: “The juvenile justice system should be radically revised to ensure that juveniles are held fully accountable for the crimes they commit. [...] Juveniles who commit adult crimes should be tried as adults and pay adult penalties.”¹²⁴ While juveniles may not have the maturity to decide whether it is reasonable or not for them to become actors in pornographic films, libertarians argue that the decision not to commit a murder should be basic enough even for younger criminals.

¹²² Alexis de Tocqueville, *Journey to America*, ed. J-P Mayer (New Haven: Yale University Press, 1960), 25.

¹²³ “Issues: Crime and Violence,” *Libertarian Party*, accessed March 10, 2015, <https://www.lp.org/issues/crime-and-violence>.

¹²⁴ *Ibid.*

3.4.2 Prisons, Probation and Parole

United States has the highest prison population rate in the world—716 persons per 100,000 citizens—and probably the highest prison population total as well, even though Chinese statistics are based on different data.¹²⁵ In 2013, there were estimated 4,751,400 persons under community supervision, i.e. probation and parole, and 2,220,300 incarcerated in local jails or prisons.¹²⁶

It is generally accepted that being incarcerated is a horrible experience. The actual correctional function of prisons is also doubtful, since “[a]bout two-thirds (67.8%) of released prisoners were arrested for a new crime within 3 years, and three-quarters (76.6%) were arrested within 5 years.”¹²⁷

Libertarians would like to change that, and their proposal is largely based on simply not incarcerating some of the offenders who are being sent to jails and prisons at the present time. Partially, the proposals rely on changes in legislation, but they include alternative punishments as well.

If someone steals money from you, without explicitly using violence or threatening to use violence, what is the purpose of locking him up? [... You] are going to lock up the perpetrator and the taxpayers will have to pay for his stay in jail. The victim himself, who already had money stolen, now has to “contribute” to housing the criminal in jail. You could say that the victim is being victimized twice, once by the individual criminal and again by the government. [...] Wouldn’t it make more sense if the criminal could pay some form of restitution? Wouldn’t it be better if he kept working and had a certain percentage of his wages garnished and sent back to the victim? He could essentially be forced to pay back his victim, plus damages, for pain and suffering.¹²⁸

Some form of probation could be used to monitor such criminals. Certain level of infringement of thieves’ personal freedoms would naturally be necessary, but locking

¹²⁵ Roy Walmsley, “World Prison Population List (tenth edition),” *International Centre for Prison Studies*, November 21, 2013, page 3–4 of electronic document, http://www.prisonstudies.org/sites/prisonstudies.org/files/resources/downloads/wppl_10.pdf.

¹²⁶ Lauren E. Glaze and Danielle Kaeble, “Correctional Populations in the United States, 2013,” *Bureau of Justice Statistics* (December 2014), page 2 of PDF bulletin, <http://www.bjs.gov/content/pub/pdf/cpus13.pdf>.

¹²⁷ Matthew R. Durose, Alexia D. Cooper and Howard N. Snyder, “Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010,” *Bureau of Justice Statistics* (April 2014), page 1 of PDF Special Report, <http://www.bjs.gov/content/pub/pdf/rprts05p0510.pdf>.

¹²⁸ Geoffrey Pike, “American Prison System: A Libertarian Perspective. Who’s the Real Criminal?” *Wealth Daily*, February 16, 2015, <http://www.wealthdaily.com/articles/american-prison-system-a-libertarian-perspective/5972>.

them up is viewed as counter-productive. Whom would libertarians put into prisons? Only the “real”, violent criminals. Pike argues that “even here we can envision where the murderer might be able to pay some form of compensation to the victim’s family. This should be the purpose of jail though. It is to keep the murderer from going out and doing it again.”¹²⁹

Naturally, the same principle that affected libertarian view on the death penalty and other serious punishments applies here as well. It does not really matter whether a criminal “deserves to suffer.” Libertarians have different opinions about this, based on their personal beliefs. What matters is that the system is not perfect and even innocent people might end up incarcerated, even if only temporarily. That is the primary reason libertarians want the conditions in prisons to be humane and bearable.

Another issue libertarians have with the current prison system is that prisons also largely serve as mental asylums. “[S]omething is wrong with the system when a large percentage of the jail population are those with mental disabilities.”¹³⁰

Interestingly, while the Libertarian Party fights for decriminalization of various offenses and general minimizing of legislation, it rather strongly opposes paroles: “When a Judge imposes a sentence, the [“real”, i.e. violent] criminal should serve that sentence. Parole and other forms of early release should be severely restricted.”¹³¹ That reasoning is partially based on fear of recidivism, which seems justified, since according to the aforementioned report, a third of offenders who were previously imprisoned for a violent crime were within 5 years arrested for another violent crime, and so were more than 28% of previous property offenders.¹³² In addition to negative prison experience, the reasons may include unwillingness of employers to hire ex-offenders, lack of support from family or community, debts etc.

¹²⁹ Ibid.

¹³⁰ Ibid.

¹³¹ “The Libertarian Party’s Solution to America’s Epidemic of Violent Crime,” *Libertarian Party*, accessed March 10, 2015, <http://www.lp.org/the-libertarian-partys-solution-to-americas-epidemic-of-violent-crime>.

¹³² Durose, Cooper and Snyder, “Recidivism of Prisoners,” page 9 of the PDF Special Report.

3.5 Case Study: The War on Drugs as the “Root of All Evil”

“War on Drugs” is a term that has been in use since 1970s and applies to a drug prohibition and its enforcement. While it also involves foreign military aid and intervention, e.g. in Mexico—a practice that goes against the libertarian principle of non-interventionism and deserves to be studied—this thesis will focus on domestic issues related to the U.S. criminal justice system.

Even though drugs had already been regulated for decades in the U.S. by that time, the real “War on Drugs” started in 1970 when President Nixon signed the Comprehensive Drug Abuse Prevention and Control Act and said that “this Nation faces a major crisis in terms of the increasing use of drugs, particularly among our young people.”¹³³ A few months later, he declared drug abuse to be “public enemy number one in the United States.”¹³⁴

The “war” has continued ever since, even though the reasoning and priorities of the administrations might have shifted. President Nixon argued that “[t]hose who have a drug habit find it necessary to steal, to commit crimes, in order to feed their habit.”¹³⁵ 2004 report of the Office of National Drug control policy focused on “[t]he economic cost of drug abuse [...which represent] both the use of resources to address health and crime consequences as well as the loss of potential productivity from disability, death and withdrawal from the legitimate workforce.”¹³⁶ Obama administration stresses the health-related consequences of drug use and shifts focus to “drug treatment and prevention efforts,” requesting \$10.9 billion to fund them.¹³⁷

Extremely high costs of the drug prohibition and its ineffectiveness are the two most criticized issues, and not only by libertarians. “[T]he President requests \$25.4 billion in Fiscal Year (FY) 2015 to reduce drug use and its consequences

¹³³ Richard Nixon, “Remarks on Signing the Comprehensive Drug Abuse Prevention and Control Act of 1970,” October 27, 1970, *The American Presidency Project*, <http://www.presidency.ucsb.edu/ws/?pid=2767>.

¹³⁴ Richard Nixon, “Remarks About an Intensified Program for Drug Abuse Prevention and Control,” June 17, 1971, *The American Presidency Project*, <http://www.presidency.ucsb.edu/ws/?pid=3047>.

¹³⁵ Nixon, “Remarks on Signing the Comprehensive Drug Abuse Prevention and Control Act...”

¹³⁶ Office of National Drug Control Policy, *The Economic Costs of Drug Abuse in the United States, 1992-2002* (Washington, DC: Executive Office of the President, 2004), vi.

¹³⁷ “2014 National Drug Control Strategy,” *White House*, accessed April 5, 2015, <https://www.whitehouse.gov/ondcp/national-drug-control-strategy>.

in the United States.”¹³⁸ The Associated Press reports that “[a]fter 40 years, the United States' war on drugs has cost \$1 trillion and hundreds of thousands of lives, and for what? Drug use is rampant and violence even more brutal and widespread.”¹³⁹ After all these years of prohibition, “[c]annabis use in the US and New Zealand (both 42%) [is] far higher than in any other country. The US [is] also an outlier in cocaine use (16%).”¹⁴⁰ Incarceration of offenders is extremely costly as well: “The fee to cover the average cost of incarceration for Federal inmates in Fiscal Year 2013 was \$29,291.25 (\$80.25 per day).”¹⁴¹ Last but not least, the government is losing possible tax revenue. Cato Institute estimates that

“drug legalization would yield tax revenue of \$46.7 billion annually, assuming legal drugs were taxed at rates comparable to those on alcohol and tobacco. Approximately \$8.7 billion of this revenue would result from legalization of marijuana and \$38.0 billion from legalization of other drugs.”¹⁴²

3.5.1 Libertarian Critique of the War on Drugs

War on Drugs is primarily a legislation issue, since the decision to prohibit certain substances, their consumption, production and distribution, is nothing more than a political decision. It serves as an example of paternalist legislation, laws which protect people against themselves. The tradition libertarian example would be the seatbelt laws, but the War on Drugs better fits the purposes of this thesis, since it illustrates libertarian issues with each level of the criminal justice system.

Libertarians firmly believe that “[i]ndividuals retain the right to voluntarily assume risk of harm to themselves.”¹⁴³ Drugs are no exception.

¹³⁸ Office of National Drug Control Policy, *National Drug Control Budget: FY 2015 Funding Highlights* (Washington, DC: Executive Office of the President, 2014), 2.

¹³⁹ Martha Mendoza, “U.S. drug war has met none of its goals,” *Associated Press* via *NBC News*, last edited May 13, 2010, http://www.nbcnews.com/id/37134751/ns/us_news-security/t/us-drug-war-has-met-noneits-goals/#.T6PiJeiJeVo.

¹⁴⁰ Louisa Degenhardt et al., “Toward a Global View of Alcohol, Tobacco, Cannabis, and Cocaine Use: Findings from the WHO World Mental Health Surveys,” *PLoS Med* 5, no.7 (2008): e141, Methods and Findings. doi:10.1371/journal.pmed.0050141.

¹⁴¹ Department of Justice: Bureau of Prisons, “Annual Determination of Average Cost of Incarceration,” *Federal Register*, May 12, 2014, <https://federalregister.gov/a/2014-10859>.

¹⁴² Jeffrey Miron and Katherine Waldock, *The Budgetary Impact of Ending Drug Prohibition* (Washington, D.C.: Cato Institute, 2010), Executive Summary.

¹⁴³ “Libertarian Party 2014 Platform: 1.6 Crime and Justice,” *Libertarian party*.

The Libertarian Party argues that the drug war is expensive and ineffective, or downright counter-effective.¹⁴⁴ That is not really the core issue, though, just like it is not really the issue whether drugs are good or bad, harmless or harmful. Libertarians argue that drugs should be legal, because their consummation *per se* is a victimless crime.

Because of the Drug War, the United States incarcerates more people than any country on earth. [...] More than 658,000 people are arrested every year for mere possession of marijuana, diverting attention from where it should be: on violent criminals. [...] Continuing the failed and immoral War on Drugs sends the wrong message to kids: Incarcerate people who have harmed no one else.¹⁴⁵

Naturally, the “real”, “non-victimless” crimes related to drug use—breaking laws while under influence, stealing money to buy drugs etc.—would be punishable.

At this point, a counterargument, a critique of libertarian perspective, must be mentioned. While drug abuse *per se* really is a victimless crime in the traditional sense of a victim—*another* person who suffers from life, health or property loss—it often involves other people who actually may suffer greatly. Family members, friends, colleagues, or even neighbors may, and probably will be, negatively affected when an individual becomes addicted. Libertarians do not necessarily ignore that, but their uncompromising description of drug use as “victimless” may look a little too simplistic, and even though we may respect the libertarian notion that the role of the state does not involve helping those who indirectly suffer because of another person’s addiction, this issue deserves to be mentioned and the appropriate reaction discussed.

According to libertarians, ending the drug war would not only be “just,” but it would also solve several issues related to policing. While the biggest libertarian issue with the War on Drugs remains the perceived injustice of being arrested for a crime that they consider victimless, they also criticize what they see as a huge waste of money and resources that could be invested elsewhere. In 2013, “[t]he highest number of arrests were for drug abuse violations (estimated at 1,501,043 arrests).”¹⁴⁶ That number

¹⁴⁴ “LP Candidate Pledge: End the War on Drugs,” *Libertarian Party*, accessed April 21, 2015, <http://www.lp.org/lp-candidate-pledge-end-the-war-on-drugs>.

¹⁴⁵ *Ibid.*

¹⁴⁶ “Crime in the United States 2013: Persons Arrested,” *Federal Bureau of Investigation*, accessed April 15, 2015, <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/persons-arrested/persons-arrested>.

does not include violent or property crimes, and over 40% of the arrests are for possession of marihuana.¹⁴⁷ If the legal police procedures are followed, each arrest involves significant amounts of paperwork, consuming time and money.

That leads to another problem: police discretion. It is the power of officers to decide to what extent the procedures should be followed, e.g. whether a traffic ticket should be issued or whether a verbal reprimand is sufficient. That is not inherently wrong, but in case of drug-related crimes, officers are often forced into situations where no decision is “right.” In his personal recollection of his one-year-long experience as a police officer in Baltimore, Peter Moskos explains how officers who catch an addict with one pill classified as an illegal drug have to decide whether they will spend unproductive time filing paperwork and reports, submitting confiscated drug for destruction etc., or pretend they did not see anything, or unofficially destroy the drug themselves.¹⁴⁸

The first would make the system literally too ineffective to work. The other way forces law enforcement officers to break the law.

Arrest is naturally not the end of the process. As was explained earlier, the number of arrests causes the courts to be overburdened—the fact that one third of all defendants is charged with non-violent non-property drug offences was the first issue. The libertarian solution to this particular issue remains the same: “Ending the disastrous war on drugs would unclog our courts in short order.”¹⁴⁹

The second major judicial issue related to the War on Drugs is the harshness of sentences which the judges are forced to impose, because of so-called mandatory minimums. Mandatory minimums set the lower limit of the punishment, below which the defendant cannot be sentenced. They are by no means limited to drug-related crimes, but since they make a legislation opposed by libertarians even harsher, they serve as one of the most relevant examples of judicial issues.

¹⁴⁷ Ibid.

¹⁴⁸ Peter Moskos, *Cop in the Hood: My Year Policing Baltimore's Eastern District* (Princeton: Princeton University Press, 2009), 56–58.

¹⁴⁹ Timothy Lynch, “The Devil’s Bargain...”

Erik Luna stated that while “upper sentencing limits” are desirable, minimums go against accepted practices; that they “eliminate judicial discretion;” that differences between punishments can be extremely disproportionate to differences between crimes, e.g. 0.1-gram difference in the amount of illegal drug may result in incarceration; that they place serious and low-level offenders on too similar a level, etc.¹⁵⁰

Statistical data prove that criminalization of drugs is responsible for overcrowded prisons, probably the most pressing issue in the correctional level. According to official statistics, only 53.8% of sentenced prisoners, 707,500 persons, on the state level were imprisoned for violent crimes in December 2012. 16%, 210,200 persons, were incarcerated for non-violent, non-property drug crimes: 3.7% for mere possession, the rest for trafficking or other drug offenses.¹⁵¹

On the federal level, as of September 30, 2013, 50.7%, or 98,200 persons, were incarcerated for drug-related crimes, and only of 7%, 13,600 persons, for violent crimes.¹⁵²

Libertarians claim a significant share of these inmates should not have been incarcerated in the first place. Legalizing drugs is a concrete proposals of the Libertarian Party—possession would not be illegal, nor would be the trade. Other libertarian solutions can potentially affect 10.7% of state and 35.7% of federal prisoners, a total of 209,400 persons, who are sentenced for crimes against “public-order (weapons, drunk driving, and court offenses; commercialized vice, morals, and decency offenses; and liquor law violations and other public-order offenses”; on the federal level also immigration), most of which libertarians do not consider criminal, with the exception of drunk driving and possibly court offenses. If alternative forms of punishment were used when dealing with property criminals—burglary, theft etc.—up to 18.8%, 247,100 persons, at the state-level, and 6%, or 11,500 persons, at the federal-level inmates might not be behind bars.¹⁵³

¹⁵⁰Erik Luna, “Mandatory Minimum Sentencing Provisions Under Federal Law (Testimony, United States Sentencing Commission),” *Cato Institute*, May 27, 2010, <http://www.cato.org/publications/congressional-testimony/mandatory-minimum-sentencing-provisions-under-federal-law>.

¹⁵¹E. Ann Carson, “Prisoners in 2013,” *Bureau of Justice Statistics*, September 16, 2014, pages 15–16 of PDF bulletin. <http://www.bjs.gov/content/pub/pdf/p13.pdf>.

¹⁵²Ibid, 17.

¹⁵³Ibid., 15–17.

3.5.2 Case Study Conclusion

The War on Drugs may be the single biggest issue libertarians have with the U.S. criminal justice system.

Not only do they claim that the legislation is overly expensive and useless, or, in fact, counter-productive. In the libertarian ideological view, the government has no right to ban drugs, even if it did not cost anything and the intended goals were achievable.

It is not the goal of this thesis to decide whether the war is in fact worth waging, but libertarians largely base their proposals and solutions on its abolition, and it is worth noting that if their proposal was adopted, it could lead to up to 1.5 million fewer arrests, a 33% decrease in felony case filings, and release of more than 300,000 non-violent persons from jails and prisons.¹⁵⁴

What other possible consequences might the complete legalization of all drugs have, definitely deserves to be examined, although this is not the goal of this thesis.

¹⁵⁴ Federal Bureau of Investigation, *Crime in the United States 2013*. Brian A. Reaves, “State Court Processing Statistics”. E. Ann Carson, “Prisoners in 2013”.

3.6 Chapter 3 Conclusion

According to libertarians, criminal laws should be strictly apolitical, not derived from abstract concepts like morality or ideology, used only regulate behavior that causes harm to others or their property. This simplification of the legal system is the foundation for most of the libertarian proposals and criticism.

When analyzing the issues which libertarians have with the police, a clash of two different positions is apparent. On one hand, the police are necessary, need authority, and deserve respect. On the other hand, libertarians believe that police powers must be strictly regulated. The practical aspects of libertarian critique of policing are based on their perception that order should not be enforced and that officers are forced by the system to waste their time and effort on arresting and processing “pseudocriminals” like drug offenders, instead of focusing on violent and property crimes.

The notion that legislation is overly complex also resonates in libertarian criticism of the judicial level of the criminal justice system. Massive decriminalization of activities that are currently defined as criminal, is the preferred solution to overburdened courts and defense attorneys. Mandatory minimums should be abolished, as well as plea bargains, which libertarians consider unconstitutional and unjust.

Corrections are viewed as a necessary evil, and, while libertarians may think that certain punishment would be just, or even desirable, they do not want the government to have too much power, and also warn against the possibility of human or systemic error. Most of them would ergo abolish the death penalty and avoid “cruel and unusual” punishments. Libertarian solutions to overcrowded, expensive and probably also societally dangerous prisons are based on decriminalizing, i.e. legalizing drugs and many types of currently illegal behavior. Some even consider alternative punishments for all non-violent criminals who do not pose any apparent or imminent threat to others. They emphasize the need to reimburse the victims, rather than to punish the perpetrators.

Conclusion

The thesis introduced libertarianism as an approach to life and as a political philosophy, analyzed its actual influence on U.S. politics, and examined the libertarian perspective on the key issues in the U.S. criminal justice system, as well as the solutions which libertarians propose.

In the first chapter, the thesis proved the hypothesis that libertarians are uncompromising in their values and priorities and rather extremist in their critique of today's society and in the changes they would like to see adopted. While that is not inherently wrong—compromises are not necessarily a good thing and extremism *per se* is not necessarily wrong or dangerous—it is something of what both researchers and voters need to be aware. Libertarian extremism does have one significant advantage for research purposes, though. Because the libertarian set of values is clearly defined and because libertarians are consistent in their reasoning, it is not only possible, but relatively simple to accurately deduce what libertarian positions are, even before reliable source can be found to substantiate such deductions. The hypothesis that libertarians do not oppose the general existence of the criminal justice system has also been proven in the first chapter.

The second chapter partially built on the theoretical foundation introduced in Chapter 1 and presented evidence in favor of another hypothesis, arguing that libertarians are *not* “fiscally conservative and socially liberal,” a compromise between Democrats and Republicans. It concluded that libertarians are even more fiscally conservative than most Republicans are, and that they are neutral in social issues, rather than liberal in the American sense. The second chapter also analyzed the real-life libertarian influence to prove the relevance of this debate. By evaluating the election trends and successes of individual politicians and various libertarian faction and movements, it concluded that while the U.S. Libertarian Party gains influence, it is still relatively marginal when compared to the two major parties. Despite that, libertarians actually appear to be more influential than was expected when formulating the hypotheses. Especially the factions and movements linked to the Republican Party, such as the Tea Party movement, promote many libertarian ideals. Moreover, the 2016 Presidential Candidate Rand Paul, even though he is conservative on some issues, could attract many libertarian votes. While we do not predict that he will actually

win the election, libertarian influence could increase even more if he was reasonably successful. This is important, because it enables the libertarians to push their ideas into the public and the political discourse. We therefore conclude that libertarian proposals do have a chance to be adopted, even though a significant change remains improbable in the near future.

The analysis also provides opportunity for further research. It could attempt to identify the reasons for the general libertarian unpopularity in the U.S.: Are libertarian proposals simply too radical for mainstream voters? How big a role do political barriers play, such as the two-party system?

The third chapter was pivotal and applied the libertarian perspective and critique to the issues in the U.S. criminal justice system. The analysis provided answers to the remaining research questions and the last hypothesis, related to one of them: What are the key issues that libertarians have with each component of the criminal justice system in the United States? What solutions do they propose and what is their reasoning?

While libertarians do in fact identify a few systemic issues, e.g. plea bargaining as an issue on the judicial level or the emphasis on punishment of the offender, rather than reimbursement of the victim, as an issue on the level of corrections, the analysis concluded that libertarians criticize mostly faulty legislation and view it as a cause of most problems in the system. In the libertarian view, many types of behavior should not be criminalized. They claim that neither morality, nor order and “niceness” should be enforced; not even if the majority of citizens supported such laws. Libertarians for example argue that the police should not enforce order, because it gives them too much power to potentially harass citizens.

Specific category of criminal law which libertarians view as undesirable are paternalistic laws. The most illustrative example for purposes of this thesis is the so-called “War on Drugs,” a subject of a case study included at the end of the third chapter. It also shows that libertarians pose different questions than other political players, and provide fundamentally different reasoning.

The main argument of libertarians is not based on harmlessness or harmfulness of various drugs, and even the potential solution to issues in criminal justice system could be perceived as a secondary goal, a side effect. Libertarians simply claim that individuals have a right to harm themselves and that it is not the role of the government to protect

them from such harm; especially not by criminalizing the activity. That is a crucial difference between them and most other political actors.

Naturally, libertarians do provide additional arguments. They criticize the enormous costs of the drug war, and its ineffectiveness—no significant drop in drug addictions. Moreover, they see the drug prohibition as a root of many issues in the criminal justice system itself. Libertarians say that 1,5 million drug arrests every year may distract the police from solving the “real,” i.e. violent and property crimes. They claim that courts could be much more effective if drugs were legal, since there would be a potential 33% drop in felony case filings alone. And, most importantly, libertarians despise the fact that over 300 thousand people are currently incarcerated for non-violent and non-property drug crimes. While legislators fight the ineffectiveness with increased harshness, e.g. by introducing the so-called mandatory minimums, libertarians simply propose complete legalization of the currently illegal substances.

Should the additional libertarian proposals be adopted, even more people could avoid the destructive prison environment—for example, if people who committed non-violent property crimes were not necessarily incarcerated, and the punishment was replaced with restitution to the victim, e.g. in form of certain percentage of the perpetrator’s wage for a certain period of time.

The libertarian proposals seem to solve the analyzed problems very effectively—releasing prisoners is a rather obvious way of dealing with the fact that prisons are overcrowded. However, there are limits to the analysis provided in this thesis.

The “libertarianization” of the criminal justice system can have consequences that need to be subjects of additional research. Would legalization of all drugs lead to an increase in the number of addicts? Would tolerance for disorderly behavior that harms neither other people nor any property, e.g. loitering, have negative consequences, as is partially suggested by the popular broken windows theory? An unbiased research dealing with these and similar questions would allow policymakers to make more informed decisions.

Ultimately, though, the legislation is often based on values. While this thesis, for the sake of balanced discussion, occasionally provided counterarguments to libertarian reasoning—e.g. noting that viewing drug consumption as a purely victimless crime

is too simplistic, omitting the impact on those who are close to the addict—it does not aim to judge libertarian philosophy.

We claim, however, that being familiar with libertarian proposals and analyzing them is relevant.

Shrnutí

Hlavním tématem této práce byla analýza libertariánské kritiky amerického systému trestního práva a trestního řízení. Tento systém čelí v současné době mnoha problémům, a jak experti, tak politici a občané volají po jeho reformě. Podle autora práce je nutné seznámit se i s postojem libertariánů a jejich prioritami, protože libertarianismus jako životní a politická filosofie získává ve Spojených státech amerických na popularitě.

Tato práce nejprve představila ideologii jako celek. Zanalyzovala libertariánský žebříček hodnot, který je postavený na takřka výhradní nadřazenosti osobní a majetkové svobody nad ostatními principy. Na základě této analýzy dokazuje, že libertariáni navzdory obecnému přesvědčení nepředstavují kompromis mezi americkými liberály a konzervativci, reprezentovanými dvěma nejvýznamnějšími stranami – Demokratickou a Republikánskou. Přesto práce zároveň dospěla k závěru, že jsou to právě frakce v těchto dvou stranách a hnutí s nimi spojená – nikoli ideologicky vyhraněná Libertariánská strana – kdo má největší šanci prosadit myšlenky libertariánů v reálném světě.

Z analýzy libertariánské kritiky vyplývá, že i když libertariáni nesouhlasí s některými prvky systému samotného, například s využíváním takzvaných „dohod o vině a trestu“ (plea bargains), hlavní problém vidí v samotných zákonech, které kriminalizují jednání a chování, jež libertariáni nepovažují za kriminální. Podle libertariánů by nemělo být možné zákonně vynucovat morálku a pořádek, respektive by nemělo být nezákonné žádné jednání, které neškodí nikomu kromě samotného pachatele.

Takzvaná válka proti drogám byla použita jako případová studie, která tuto kritiku ilustruje. Podle libertariánů nezáleží na tom, jestli je konzumace některých látek škodlivá nebo špatná – vláda nemá právo nařizovat občanům v zájmu jejich dobra, co smí, a co nesmí požívat. Protože to vláda ve skutečnosti dělá, kritizují libertariáni důsledky. Soudy a policejní složky se podle nich rozptylují řešením drogových případů „bez obětí“, místo aby se soustředili na „opravdové“, tj. násilné a majetkové zločiny. Libertariáni také poukazují také na to, že je v USA momentálně uvězněno přes 300 tisíc lidí za nenásilné a nemajetkové zločiny spojené s drogami – držení, případně distribuci či úmysl distribuovat. Legalizace drog by tyto problémy vyřešila, a pokud by byla aplikována i další libertariánská řešení, například alternativní tresty pro nenásilné majetkové zločince, byla by momentálně přeplněná vězení ještě prázdnější.

Práce upozorňuje na nutnost zkoumat případné vedlejší důsledky těchto návrhů (například možný nárůst závislosti) a nesnaží se rozhodnout, jestli nestojí za to udržovat současný stav navzdory analyzovaným problémům, například vést „válku proti drogám“ navzdory zmiňovaným nepříznivým statistikám. To je otázka osobních ideologických a politických preferencí. Stejně tak se práce nesnaží hodnotit libertariánské návrhy z hlediska etiky, nanejvýš v některých případech upozorňuje na nutnost vést debatu ohledně vybraných tvrzení libertariánů.

Bibliography

Primary Sources

“2014 National Drug Control Strategy.” *White House*. Accessed April 5, 2015. <https://www.whitehouse.gov/ondcp/national-drug-control-strategy>.

“About Campaign for Liberty: Statement of Principles.” *Campaign for Liberty*. Accessed April 21, 2015. <http://www.campaignforliberty.org/about/>.

“About Rand Paul.” *RandPaul.com*. Accessed April 20, 2015. <http://www.randpaul.com/about>.

“About the Republican Liberty Caucus.” *Republican Liberty Caucus*. Accessed April 26, 2015. <http://www.rlc.org/about-republican-liberty-caucus>.

“About Us.” *Tea Party*. Accessed March 20, 2015. <http://www.teaparty.org/about-us>.

“Crime in the United States 2013: Persons Arrested.” *Federal Bureau of Investigation*. Accessed April 15, 2015. <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/persons-arrested/persons-arrested>.

“DFC Platform.” *Democratic Freedom Caucus*. Accessed April 26, 2015. <http://www.democraticfreedomcaucus.org/dfc-platform/>.

“Elected Officials.” *Libertarian Party*. Accessed March 25, 2015. <http://www.lp.org/candidates/elected-officials>.

“Elected Officials.” *Republican Liberty Caucus*. Accessed April 26, 2015. <http://www.rlc.org/elected-officials>.

“Elections.” *Democratic Freedom Caucus*. Accessed April 26, 2015. <http://www.democraticfreedomcaucus.org/category/elections/>.

“Endorsements.” *Democratic Freedom Caucus*. Accessed April 26, 2015. <http://www.democraticfreedomcaucus.org/category/endorsements/>.

“Introduction.” *Libertarian Party*. Accessed March 25, 2015. <http://www.lp.org/introduction/what-is-the-libertarian-party>.

“Issues.” *Libertarian Party*. Accessed March 25, 2015. <http://www.lp.org/issues>.

“Issues: Crime and Violence.” *Libertarian Party*. Accessed March 10, 2015. <https://www.lp.org/issues/crime-and-violence>.

“Issues: Criminal Justice Reforms.” *RandPaul.com*. Accessed April 20, 2015. <http://www.randpaul.com/issue/criminal-justice-reforms>.

- “Issues: Gun Laws.” *Libertarian Party*. Accessed April 5, 2015. <https://www.lp.org/issues/gun-laws>.
- “Issues: Sanctity of Life.” *RandPaul.com*. Accessed April 20, 2015. <http://www.randpaul.com/issue/sanctity-of-life>.
- “Libertarian Party 2014 Platform: 1.6 Crime and Justice.” *Libertarian Party*. June 2014. <http://www.lp.org/platform#1.6>.
- “Liberty Index.” *Republican Liberty Caucus*. Accessed April 26, 2015. <http://www.rlc.org/liberty-index>.
- “LP Candidate Pledge: End the War on Drugs.” *Libertarian Party*. Accessed April 21, 2015. <http://www.lp.org/lp-candidate-pledge-end-the-war-on-drugs>.
- “Mission.” *Young Americans for Liberty*. Accessed April 21, 2015. <http://www.yaliberty.org/about/mission>.
- “Our History.” *Libertarian Party*. Accessed March 25, 2015. <http://www.lp.org/our-history>.
- “Platform.” *Libertarian Party*. Accessed March 25, 2015. <http://www.lp.org/platform>.
- “Ron Paul Endorses Young Americans for Liberty.” *Young Americans for Liberty*. Accessed April 21, 2015. <http://www.yaliberty.org/about/ronpaul>.
- “Statement of Principles & Positions.” *Republican Liberty Caucus*. Accessed April 26, 2015. <http://www.rlc.org/principles>.
- “The Libertarian Party's Solution to America's Epidemic of Violent Crime.” *Libertarian Party*. Accessed March 10, 2015. <http://www.lp.org/the-libertarian-partys-solution-to-americas-epidemic-of-violent-crime>.
- Carson, E. Ann. “Prisoners in 2013.” *Bureau of Justice Statistics*. September 16, 2014. PDF bulletin. <http://www.bjs.gov/content/pub/pdf/p13.pdf>.
- Department of Justice: Bureau of Prisons. “Annual Determination of Average Cost of Incarceration.” *Federal Register*. May 12, 2014. <https://federalregister.gov/a/2014-10859>.
- Durose, Matthew R., Alexia D. Cooper and Howard N. Snyder. “Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010.” *Bureau of Justice Statistics*. April 2014. PDF Special Report. <http://www.bjs.gov/content/pub/pdf/rprts05p0510.pdf>.
- Federal Election Commission. “2000 Presidential Electoral and Popular Vote.” In *Federal Elections 2000*. Washington, D.C.: Federal Election Commission, 2001. <http://www.fec.gov/pubrec/fe2000/elecpop.htm>.

Federal Election Commission. “2012 Presidential Popular Vote Summary For All Candidates Listed on at Least One State Ballot.” In *Federal Elections 2012*. Washington, D.C.: Federal Election Commission, 2013.
<http://www.fec.gov/pubrec/fe2012/2012pres.pdf>.

Federal Election Commission. “Official General Election Results for United States President November 6, 1984.” In *Federal Elections 84*, 1–15. Washington, D.C.: Federal Election Commission, 1985.

Federal Election Commission. “Official General Election Results for United States President November 2, 2004.” In *Federal Elections 2004*, 25–39. Washington, D.C.: Federal Election Commission, 2005.

Federal Election Commission. “Official General Election Results for United States President November 6, 2008.” In *Federal Elections 2008*, 25–40. Washington, D.C.: Federal Election Commission, 2009.

Federal Election Commission, “U.S. House of Representatives Results,” in *Federal Elections 2004, 2006, 2008, 2010, 2012* (Washington, D.C.: Federal Election Commission, 2005–2013). <http://www.fec.gov/pubrec/electionresults.shtml>.

Federal Election Commission. “2000 Presidential Popular Vote Summary For All Candidates Listed on at Least One State Ballot.” In *Federal Elections 2000*. Washington, D.C.: Federal Election Commission, 2001.
<http://www.fec.gov/pubrec/fe2000/prespop.htm>.

Glaze, Lauren E. and Danielle Kaeble. “Correctional Populations in the United States, 2013.” *Bureau of Justice Statistics*. December 2014. PDF bulletin.
<http://www.bjs.gov/content/pub/pdf/cpus13.pdf>.

Luna, Erik. “Mandatory Minimum Sentencing Provisions Under Federal Law (Testimony, United States Sentencing Commission).” *Cato Institute*. May 27, 2010.
<http://www.cato.org/publications/congressional-testimony/mandatory-minimum-sentencing-provisions-under-federal-law>.

Miron, Jeffrey and Katherine Waldock. *The Budgetary Impact of Ending Drug Prohibition*. Washington, D.C.: Cato Institute, 2010.

Moyers, Bill and Ron Paul. “Bill Moyers talks with Ron Paul.” *Bill Moyers Journal*. PBS, aired January 4, 2008. Transcript.
<http://www.pbs.org/moyers/journal/01042008/transcript2.html>.

Nixon, Richard. “Remarks About an Intensified Program for Drug Abuse Prevention and Control.” June 17, 1971. *The American Presidency Project*.
<http://www.presidency.ucsb.edu/ws/?pid=3047>.

Nixon, Richard. “Remarks on Signing the Comprehensive Drug Abuse Prevention and Control Act of 1970.” October 27, 1970. *The American Presidency Project*.
<http://www.presidency.ucsb.edu/ws/?pid=2767>.

Office of National Drug Control Policy. *National Drug Control Budget: FY 2015 Funding Highlights*. Washington, DC: Executive Office of the President, 2014.

Office of National Drug Control Policy. *The Economic Costs of Drug Abuse in the United States, 1992-2002*. Washington, DC: Executive Office of the President, 2004.

Reaves, Brian A. "State Court Processing Statistics: Felony Defendants in Large Urban Counties, 2009 - Statistical Tables." *Bureau of Justice Statistics*, December 2013. PDF Statistical Tables. <http://www.bjs.gov/content/pub/pdf/fdluc09.pdf>.

U.S. Supreme Court. 2003. *Lawrence v. Texas*, syllabus, 539 U.S. 558.

United States Sentencing Commission. *2014 Sourcebook of Federal Sentencing Statistics*. <http://www.ussc.gov/research-and-publications/annual-reports-sourcebooks/2014/sourcebook-2014>.

Wallace, Chris and Rand Paul. "Sen. Rand Paul on top congressional issues; pivotal moment in the battle over gay marriage." *Fox News Sunday*. Fox News, aired March 24, 2013. Transcript. <http://www.foxnews.com/transcript/2013/03/24/sen-rand-paul-top-congressional-issues-pivotal-moment-battle-over-gay-marriage/>.

Walmsley, Roy. "World Prison Population List (tenth edition)." *International Centre for Prison Studies*. November 21, 2013. PDF. http://www.prisonstudies.org/sites/prisonstudies.org/files/resources/downloads/wppl_10.pdf.

Secondary Sources

Monographs

Boaz, David. *Libertarianism: A Primer*. New York: Free Press, 1997.

Conover, Ted. *Newjack*. New York: Random House, 2000.

Emerson, Ralph Waldo. *Essays: First Series: Self-Reliance (1847 edition)*. *Wikisource.org*. Accessed February 22, 2015. https://en.wikisource.org/wiki/Essays:_First_Series/Self-Reliance

Maddox, William S., and Stuart A. Lilie. *Beyond Liberal and Conservative: Reassessing the Political Spectrum*. Washington, D.C.: Cato Institute, 1986.

Mill, John Stuart. *On Liberty*. The Project Gutenberg E-Book: 2011. <http://www.gutenberg.org/files/34901/34901-h/34901-h.htm>.

Mises, Ludwig von. *Liberalism*. New York: The Foundation for Economic Education, 1985.

Moskos, Peter. *Cop in the Hood: My Year Policing Baltimore's Eastern District*. Princeton: Princeton University Press, 2009.

Nozick, Robert. *Anarchy, State, and Utopia*. Oxford: Blackwell Publishers 1974.

Paul, Ron. *Liberty Defined: 50 Essential Issues That Affect Our Freedom*. New York City: Grand Central Publishing, 2011.

Rand, Ayn. *Atlas Shrugged (35th anniversary ed.)*. New York: Dutton, 1992.

Rand, Ayn. *Philosophy, Who Needs It*. Indianapolis: Bobbs-Merrill, 1982.

Rand, Ayn, and Nathaniel Branden. *The Virtue of Selfishness: A New Concept of Egoism*. New York: New American Library, 1964.

Sumner, William Graham. *What Social Classes Owe to Each Other*. Auburn, AL, USA: Ludwig von Mises Institute, 1934.

Thoreau, Henry David. *On the Duty of Civil Disobedience* [1849, original title: Resistance to Civil Government]. Constitution.org. Accessed February 21, 2015. <http://www.constitution.org/civ/civildis.htm>.

Tocqueville, Alexis de. *Journey to America*. Edited by J-P Mayer. New Haven: Yale University Press, 1960.

Edited Collections

Boaz, David (Ed.). *The Crisis in Drug Prohibition*. Washington, D.C.: Cato Institute, 1990.

Cole, George F. *The Criminal Justice System: Politics and Policies*. 7th ed. Belmont, West/Wadsworth Pub., 2008.

Gladwell, Malcolm. "The Power of Context (Part One): Bernie Goetz and the Rise and Fall of New York City Crime." In *The Tipping Point: How Little Things Can Make a Big Difference*, 133–169. New York, 2000.

Long, Roderick T., and Tibor R. Machan (Ed.). *Anarchism/Minarchism: Is a Government Part of a Free Country?* Hampshire: Ashgate Publishing Limited, 2008.

Lynch, Timothy (Ed.). *After Prohibition: An Adult Approach to Drug Policies in the 21st Century*. Washington, D.C.: Cato Institute, 2000.

Journals

Degenhardt, Louisa, W-T Chiu, N. Sampson, Ronald C Kessler, James C Anthony, Matthias Angermeyer, Ronny Bruffaerts, Giovanni de Girolamo, Oye Gureje, Yueqin Huang, Aimee Karam, Stanislav Kostyuchenko, Jean Pierre Lepine, Maria Elena Medina Mora, Yehuda Neumark, J. Hans Ormel, Alejandra Pinto-Meza, José Posada-Villa, Dan J Stein, Tadashi Takeshima, J. Elisabeth Wells. "Toward a Global View of Alcohol, Tobacco, Cannabis, and Cocaine Use: Findings from the WHO World Mental Health Surveys." *PLoS Med* 5, no.7 (2008): e141. doi:10.1371/journal.pmed.0050141.

Freeman, Samuel. "Illiberal Libertarians: Why Libertarianism Is Not a Liberal View." *Philosophy & Public Affairs* 30, No.2 (Spring, 2001): 105-151.

Luna, Erik. "Traces of a Libertarian Theory of Punishment." *Marquette Law Review* 91, no. 1 (2007): 263–294.

Packer, Herbert L. "Two Models of the Criminal Process," *University of Pennsylvania Law Review* 113, no. 1 (November 1964): 1–68.

Possolo, Manuel. "Morals Legislation after Lawrence: Can States Criminalize the Sale Of Sexual Devices?" *Stanford Law Review* 65, no. 3 (March 2013): 565–598.

Roots, Roger. "Are Cops Constitutional?" *Constitution Society* (originally published in *Seton Hall Constitutional L.J.* 2001, 685). Accessed April 4, 2015. <http://www.constitution.org/irev/roots/cops.htm>.

Scott, Robert E. and William J. Stuntz, "Plea Bargaining as Contract." *Yale Law Journal* 107, no. 1 (June 1992): 1–76.

Articles and Essays

Brin, David, "Ten Ways that Gerrymandering Feeds a Vicious Cycle of Radicalization." In *American Democracy: More Fragile Than We Think*. 2006. Accessed April 28, 2015. <http://www.davidbrin.com/gerrymandering2.html>.

Chodorov, Frank. "When War Comes." *The School of Cooperative Individualism*. Reprinted from *The Freeman*, November, 1938. Accessed March 15, 2015. http://www.cooperativeindividualism.org/chodorov-frank_when-war-comes-1938.html.

Ezra, Michael. "Racism at the Libertarian Alliance." *Harry's place*. Last modified May 23, 2014. <http://hurryupharry.org/2014/05/23/racism-at-the-libertarian-alliance/>.

Healy, Gene. "Fight against militarized police is a culture war worth having." *Washington Examiner*. August 25, 2014. <http://www.washingtonexaminer.com/fight-against-militarized-police-is-a-culture-war-worth-having/article/2552413>.

Howard, Philip K. "Judges: The Problem and Solution to America's Judiciary Mess." *The Atlantic*. June 6, 2012. <http://www.theatlantic.com/national/archive/2012/06/judges-the-problem-and-solution-to-americas-judiciary-mess/258131/>.

Lynch, Timothy. "The Devil's Bargain: How Plea Agreements, Never Contemplated by the Framers, Undermine Justice." *Cato Institute*. Originally published in July 2011 issue of *Reason*. <http://www.cato.org/publications/commentary/devils-bargain-how-plea-agreements-never-contemplated-framers-undermine-justice>.

Mataconis, Doug. "Texas Republican Liberty Caucus Denounces Anti-Gay Planks In Party Platform." *United Liberty*, June 26, 2010. <http://www.unitedliberty.org/articles/6195-texas-republican-liberty-caucus-denounces-anti-gay-planks-in-party-platform>.

Mendoza, Martha. "U.S. drug war has met none of its goals." *Associated Press* via *NBC News*. Last edited May 13, 2010. http://www.nbcnews.com/id/37134751/ns/us_news-security/t/us-drug-war-has-met-noneits-goals/#.T6PiJeiJeVo.

Pike, Geoffrey. "American Prison System: A Libertarian Perspective. Who's the Real Criminal?" *Wealth Daily*. February 16, 2015. <http://www.wealthdaily.com/articles/american-prison-system-a-libertarian-perspective/5972>.

Poole, Robert W., Jr. "In memoriam: Barry Goldwater." *Reason*. August 1, 1998. <http://www.thefreelibrary.com/In+memoriam%3A+Bar>.

Reynolds, Glenn Harlan. "Police problem is unaccountable attitude: Column." *USA Today*. August 26, 2014. <http://www.usatoday.com/story/opinion/2014/08/25/police-militarization-accountability-review-military-equipment-swat-column/14576871/>.

Riggenbach, Jeff. "Josiah Warren: The First American Anarchist." *Mises Daily*. Ludwig von Mises Institute. February 25, 2011. <http://mises.org/daily/5067/Josiah-Warren-The-First-American-Anarchist>.

Rothbard, Murray N. "Myth and Truth About Libertarianism." *LewRockwell.com*. Accessed March 16, 2015. <http://archive.lewrockwell.com/rothbard/rothbard168.html>.

Tucker, Benjamin R. "State Socialism and Anarchism: How Far They Agree, and Wherein They Differ." *Molinari Institute*. Originally published 1888. Accessed February 21, 2015. <http://praxeology.net/BT-SSA.htm>.

Vogel, Kenneth P. "'Money bomb': Ron Paul raises \$6 million in 24-hour period." *USA Today*. December 17, 2007. http://usatoday30.usatoday.com/news/politics/election2008/2007-12-17-ronpaul-fundraising_N.htm.

Wallsten, Peter. "Sen. Rand Paul aggressively courting evangelicals to win over GOP establishment." *The Washington Post*. May 12, 2013.

http://www.washingtonpost.com/politics/sen-rand-paul-aggressively-courting-evangelicals-to-win-over-gop-establishment/2013/05/12/d917ccb4-b8af-11e2-b94c-b684dda07add_story_1.html.

Warren, Josiah. "Manifesto: A Libertarian Document." *Anarchy Archives: An Online Research Center on the History and Theory of Anarchism*. Originally published 1841. Accessed February 22, 2015.

http://dwardmac.pitzer.edu/anarchist_archives/bright/warren/warrenmanifesto/pages/6.html.

Wilson, James Q., and George L. Kelling, "Broken Windows: The police and neighborhood safety," *The Atlantic* (March, 1982).

Other Sources

"Background on Principles & Values." *OnTheIssues.org – Candidates on the Issues*. Accessed January 25, 2015,

http://www.ontheissues.org/Background_Principles+_Values.htm.

"Johnson on Capital Punishment." *2012 Presidential Candidates*. Accessed April 10, 2015. <http://2012.presidential-candidates.org/Johnson/Capital-Punishment.php>.

"Libertarian FAQ." *Frequently Asked Questions*. Last modified May 11, 1998. <http://www.faqs.org/faqs/libertarian/faq/>.

"Libertarians. Diligently plotting to take over the World and leave you alone." *Zazzle.com on Pinterest*. Accessed February 16, 2015.

<https://www.pinterest.com/pin/75224256250142937/>

"Paul on Capital Punishment." *2012 Presidential Candidates*. Accessed April 10, 2015. <http://2012.presidential-candidates.org/Paul/Capital-Punishment.php>.

"Profiles: Ron Paul." *Mises Institute*. Accessed April 21, 2015.

<https://mises.org/profile/ron-paul>.

"Republican Convention 2012." *Green Papers*. Accessed April 22, 2015.

<http://www.thegreenpapers.com/P12/R>.

"Ron Paul's Voting Records." *Project Vote Smart*. Accessed April 21, 2015.

<http://votesmart.org/candidate/key-votes/296/ron-paul#.VVRbxo7tlBc>.

"The Smoking Ban." *Libertarian View*. Last modified April 21, 2011.

<http://www.libertarianview.co.uk/current-affairs/smoking-ban>.

“Your Liberty To Swing Your Fist Ends Just Where My Nose Begins.” *Quote Investigator: Exploring the Origins of Quotations*. Accessed April 1, 2015. <http://quoteinvestigator.com/2011/10/15/liberty-fist-nose/>.

Jillette, Penn, and Teller. *Penn & Teller: Bullshit! Season 7, Episode 7: Taxes*, Television, Showtime Network. August 5, 2009.

Moseley, Alexander. “Egoism: Rational Egoism.” *Internet Encyclopedia of Philosophy*. Accessed March 16, 2015. <http://www.iep.utm.edu/egoism/#SH2a>.

Petersen, Austin. “10 rules for dealing with police (VIDEO).” *The Libertarian Republic*. September 9, 2013. <http://thelibertarianrepublic.com/10-rules-dealing-police/>.

Sandel, Michael J. *Justice: What's The Right Thing To Do? Episode 03: "FREE TO CHOOSE"*. YouTube video, 55:07. September 8, 2009. <http://youtu.be/Qw4I1w0rkjs>.

Wells, Sam. “What a Libertarian Is - and Is Not.” *Laissez-Fairerepublic.com*. Accessed April 16, 2015. <http://laissez-fairerepublic.com/libertar.htm>.

Winger, Richard. “October 2014 Registration Totals.” *Ballot Access News* 30, No. 7 (December 1, 2014). <http://ballot-access.org/2014/12/26/december-2014-ballot-access-news-print-edition/>.