

LIBERTY VERSUS DEMOCRACY IN BRUNO LEONI AND FRIEDRICH VON HAYEK

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Introduction

During the second half of the twentieth century, it seemed to many people that the democratic revolution envisioned by Alexis de Tocqueville had been definitely achieved, and in the Western world there was no visible challenge to the superiority of the democratic model. Francis Fukuyama in his famous essay “The End of History?” proclaimed that in the field of political institutions nothing new remained to be discovered and that liberal democracy was the final step of a long historical process of constitutional evolution.¹ According to neoconservatives, this victorious model should be spread to the peripheral non-democratic areas of the world, if necessary through war. Although Fukuyama’s theory has been criticized for being deterministic, it remains a widespread opinion among both political-cultural élites and the general public that contemporary democratic regimes rank at the highest level, and every other political system should be considered old-fashioned.

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¹ Fukuyama first published, in the summer of 1989 (before the fall of the Berlin Wall), an essay titled “The End of History?” in *The National Interest*. In 1992 he published *The End of History and the Last Man* (New York: Avon Books, 1992).

Yet in the Western world, democracy is living through a crisis of confidence. In part, this crisis stems from a lack of conceptual clarity, and the relationship between classical liberalism and democracy, in particular, has proved complex and difficult to untangle. We are used to talking about liberal democracy when referring to our governments and we speak of the Western liberal-democratic state, thus taking for granted an overlap between liberalism and democracy. But, is it true that, as the leading Italian political philosopher Norberto Bobbio declares, “democracy is the natural development of the liberal state”?² Bobbio suggests that the best remedy against abuse of power is the democratic process and citizens’ participation in law making. In this view, political rights are a natural complement of liberty rights and civil rights. Bobbio explains: “There are good reasons to think that today democracy is necessary to safeguard the fundamental rights of people at the basis of the liberal state.”³

In this article, I will examine the reflections on democracy of two major thinkers of contemporary classical liberalism. During the twentieth century, the leading Austrian economist Friedrich von Hayek and the Italian classical liberal Bruno Leoni criticized the tensions between democracy and classical liberalism: between collective decisions and individual liberty, and between liberty and equality. How much room do collective choices leave for individual freedom? How much and which kind of equality is compatible with individual freedom and property rights? Are living in a democracy and having the right to vote sufficient for individual freedom? These are some of the questions Hayek and Leoni tried to answer.

I choose to concentrate on Hayek and Leoni because they well represent two different positions within classical liberalism. Although Hayek felt uncomfortable with a democracy that failed to maintain its promises, he still believed in the vital spirit of the democratic Western tradition. Leoni had a much more radical approach to democracy. He questioned the idea of representation itself and considered democracy responsible for the unlimited growth of the state. Leoni exemplifies the transition from classical liberalism to a more extreme position, namely libertarianism.⁴ In light of the analysis of

² N. Bobbio, *Liberalismo e democrazia*, in *Il pensiero politico contemporaneo* edited by Gian Mario Bravo and Silvia Rota Ghibaudi (Milan: Franco Angeli, 1985), vol. 1, 46.

³ *Ibid.*, 47.

⁴ Classical liberals supported individual liberty and a limited state, but they differed on the state’s role, with some—e.g., John Stuart Mill—accepting a much more active state than others. Herbert Spencer and his disciples, such as Auberon Herbert, wished drastically to limit the state. We see this trend continuing in the twentieth century in the

democracy by Hayek and Leoni, I will question whether it is correct to consider the collapse of the communist system as an implicit vindication of the political and ethical value of democracy. I conclude that, as Leoni suggested, it is impossible to reject a planned economy as inefficient and at the same time consider democracy, founded as it is on state intervention, a valid regime.

Friedrich von Hayek

The oil crisis of 1973 led to the end of the robust postwar economic growth rates experienced by the Western nations. The economic uncertainty of the years that followed provided a framework for the crisis of the welfare state, and became one of the main topics of political reflection. During the '70s and '80s there was a revival of classical liberalism in the United States and the UK, and much less so in Continental Europe. Since the '50s, classical liberals, to differing extents, had begun to challenge the economic and redistributive role of the state. The state as the producer of a vast public debt was one of the main topics addressed by classical liberalism and libertarianism, and the economic crisis of the '70s made these concerns increasingly relevant.

In 1975, Michel Crozier, Samuel Huntington, and Joji Watanuki published *The Crisis of Democracy: Report on the Governability of Democracies to the Trilateral Commission*. According to their analysis, the growth of democracy during the '60s had led to a spiral toward un-governability. The Western democracies had been overloaded with a series of bureaucratic, economic, and social activities which led to exaggerated public expectations about what democratic government could achieve. These social expectations have been

work of Ludwig von Mises. See, e.g., his *Liberalism* (Indianapolis: Liberty Fund [1927] 2005). Libertarians went even further in an anti-statist direction, in the minimal state of Robert Nozick (see *Anarchy, State, and Utopia* [New York: Basic Books, 1974]) and the anarchism of Murray Rothbard (see *For a New Liberty* [Auburn, AL: Ludwig von Mises Institute (1973)] 2006). In Italy, Leoni was isolated because the cultural debate was centered on the distinction between political liberalism and economic liberalism introduced by Benedetto Croce and, as a result, the importance of the free market was neglected. The Italian intellectual environment during the '50s and '60s was dominated by idealism and historicism. The intellectual connections of Leoni were in the Anglo-Saxon world and included Hayek, James Buchanan, Mises, Milton Friedman, and Rothbard. Leoni was deeply influenced by these thinkers, and in turn influenced some of them. In 1960, he became secretary of the Mont Pèlerin Society, and in 1967, a few months before his death, was nominated president.

disappointed. At the same time the apparatus of the state reached enormous dimensions. The frustration of the public led to a decline of the perceived legitimacy of democratic government and to disaffection with democracy. The proposed therapy was to reduce the welfare state.⁵

Certainly it is no accident that the revival of classical liberalism during the '70s accompanied a vindication of constitutionalism: the idea that every political power, including democratic governments, must be limited. This tendency is represented in Italy by the work of Nicola Matteucci.⁶ Paradigmatic of the tendency is James Buchanan's *The Limits of Liberty: Between Anarchy and Leviathan*, published in 1975. Buchanan argued that the state should abandon its invasive economic and redistributive roles and instead recover its original classical liberal role as a protector and arbiter.⁷

A decisive moment for the classical liberal analysis of democracy is Friedrich Hayek's *Law, Legislation and Liberty*. Hayek's criticism of democracy is related to his criticism of social rights and social justice. Social justice, according to Hayek, is only a mirage, since one can speak of justice only in connection with a planned order. In the free market, no central agency distributes income and wealth, so justice is not a relevant category here. In the free market, income and wealth reflect the dispersion of knowledge of time and place among millions and millions of individuals. Moreover, the attempt to realize social justice patently violates individual property rights.⁸ Nevertheless the phrase "social justice" has captured the imagination of the public, becoming the standard for understanding what political actions are just. The effort to realize social justice has become "the distinguishing attribute of the good man and the recognized sign of the possession of a

⁵ M. Crozier, S.P. Huntington, and J. Watanuki, *The Crisis of Democracy: Report on the Governability of Democracies to the Trilateral Commission* (New York: New York University Press, 1975). This book became influential because a number of people in the Trilateral Commission took jobs in the Carter administration: Zbigniew Brzezinski, the national security advisor to the president, in particular was influenced by it. Noam Chomsky, who had earlier clashed with Huntington over the Vietnam War, attacked the book as elitist and anti-democratic. See N. Chomsky, *Radical Priorities* (Montréal: Black Rose Books, 1981).

⁶ N. Matteucci, *Il liberalismo in un mondo in trasformazione* (Bologna: Il mulino 1972).

⁷ J.M. Buchanan, *The Limits of Liberty: Between Anarchy and Leviathan*, 1975 (Indianapolis: Liberty Fund [1975] 2000).

⁸ F.A. Hayek, *The Mirage of Social Justice*, vol. 2 of *Law, Legislation and Liberty* (London: Routledge, 1982), p. 11.

moral conscience.”⁹ Appeals to social justice have become the best pretext to legitimize various requests to government. In practice, “social justice” is a distortive element typical of the interventionist state, enabling more and more particular interests to satisfy their demands.¹⁰

In the third volume of *Law, Legislation and Liberty*, Hayek directly confronted the topic of democracy. According to Hayek, “It is no longer possible to ignore that more and more thoughtful and well-meaning people are slowly losing their faith in what was to them once the inspiring ideal of democracy.” Hayek was troubled by the declining trust in democracy. But, according to him, this disaffection was not due to a failure of the democratic principle itself, but rather to a wrong application of the principle: “It is because I am anxious to rescue the true ideal from the discredit into which it is falling that I am trying to find out the mistake we made and how we can prevent the bad consequences of the democratic procedure.”¹¹ The disaffection toward democracy is due to a tendency of democratic systems to overload the state with improper ends such as social justice and guaranteed social and economic rights. Today democratic government serves “the varied interests of a conglomerate of pressure groups whose support the government must buy by grants of special benefits.”¹² Moreover, this creates an expensive public apparatus that redirects to its own members the economic resources of civil society. Hayek wants to clarify the true content of the democratic ideal, lamenting that often democracy is taken as synonymous with equality. “Strictly speaking,” Hayek writes,

it refers to a method or procedure for determining governmental decisions and not to some substantial good or aim of government (such as a sort of material equality)... But even a wholly sober and unsentimental consideration which regards democracy as a mere convention making possible a peaceful change of the holders of power should make us understand that it is an ideal worth fighting for to the utmost, because it is our only protection (even if in its present form not a certain one) against tyranny. Though democracy itself is not freedom (except for that indefinite collective, the

⁹ Ibid. 66.

¹⁰ Ibid. 66-70.

¹¹ F.A. Hayek, *The Political Order of a Free People*, vol. 3 of *Law, Legislation and Liberty* (London: Routledge, 1979) 98.

¹² Ibid. 129.

majority of “the people”) it is one of the most important safeguards of freedom.¹³

Although Hayek was disturbed by the thought of a democracy that failed to achieve the difficult compromise between individual freedom and collective choices, he still strongly believed in its vital spirit.

If we take democracy as a procedure it is easy to consider it consistent with classical liberalism. But if we attribute to democracy the ethical meaning of equality the question is much more difficult. Tocqueville himself uses the term “democracy” to mean both a procedure to elect the government and the ideal of equality. In *Democracy in America*, he observes that democratic people love equality more than freedom. They incline to liberty, “but they have an ardent, endless, passion for equality. If they cannot have it in liberty they want it even in slavery.” Liberty is antithetical to equality of condition, in his view.

For classical liberalism, equal liberty is the only acceptable form of equality. From its beginning, the liberal state was based on two principles: equality before the law and equality of rights. Liberty for the classical liberal is negative liberty, as Isaiah Berlin¹⁴ noted, a freedom from politics and the state. Liberty implies the greatest amount of self-determination that in a given situation is feasible and possible. From an ethical standpoint, it is an intrinsic value, but since it is a means to safeguarding individual happiness and protecting one’s personality, it is also an instrumental end. An equality that is not simply equality before the law and equality of rights presupposes the use of force, which in principle is opposed to freedom.

Liberty and equality are in essence contradictory. As Erik Ritter von Kuehnelt-Leddihn emphasized frequently, the terms “liberal” and “democratic” are misused. What matters to democracy is who is going to rule. Classical liberalism is interested in people enjoying the greatest reasonable amount of liberty, regardless of the juridical type of government people are living under. Furthermore, liberalism is interested in the search for an instrument to control and limit the ruling class. It should be considered together with constitutionalism and not with democracy. The postulates of democracy are: (1) legal and political equality and (2) self-government based on the rule of the majority. Moreover, respect for minorities, freedom of

¹³ Ibid. 5. This vision of democracy as a regime that renders possible change in governments without violence was shared by Karl Popper and Ludwig von Mises. Cf. L. Mises, *Liberalism* (Indianapolis: Liberty Fund, 2005).

¹⁴ I. Berlin, “Two Concepts of Liberty”, in I. Berlin, *Four Essays on Liberty* (Oxford: Oxford University Press, 1969).

speech, and limitations imposed on the majority are liberal tenets, not democratic ones.¹⁵ And in the history of political thought, we can find examples of great classical liberals who were not democratic at all. John Adams in his *Defense of the Constitution of the United States of America* attacks democracy and shows strong opposition to the egalitarian principle. Alexander Hamilton strongly criticized democracy at the Constitutional Convention. Many of the Founding Fathers not only detested and opposed direct democracy but as republicans were also quite critical of most of the principles of indirect democracy. Thomas Jefferson is often called a democrat and founder of Jeffersonian democracy, but analyzing his work we must conclude he was not democratic at all: what he had in mind was a republican aristocracy, not a democracy.¹⁶

We have to ask whether the two principles of democracy, egalitarianism and majority rule, are compatible with freedom and property rights. The Western liberal democrat is convinced that the democratic process is the best means for safeguarding liberty, assuming that the vast majority of the people aspire to liberty. Although it cannot be denied that mankind prefers a feeling of freedom to coercion, we also know that a desire for material goods through subsidies can only be satisfied at the expense of liberty and property rights. According to Kuehnelt-Leddihn, if we investigate the propensities of the masses we find that they frequently prefer to sacrifice freedom in order to enjoy material or psychological advantages.¹⁷ Egalitarianism and liberty are alternative goals. Egalitarianism can only be satisfied at the expense of property rights.

Hayek also approached the topic of democracy from a historical perspective. "It seems to be the regular course of the development of democracy," he writes, "that after a glorious first period in which it is understood as and actually operates as a safeguard of personal freedom because it accepts the limitations of a higher *nomos*, sooner or later it comes to claim the right to settle any particular question in whatever manner a majority agrees upon."¹⁸ Hayek called attention the decisive period of the modern age, when the English parliament began to claim sovereign powers, that is, power without limits, rejecting the idea that its own decisions should respect natural law and established precedents. Progressively all the limits to

¹⁵ E. Ritter Von Kuehnelt-Leddihn, *Liberty or Equality: The Challenge of Our Times* (Caldwell, ID: Caxton Printers [1952] 2014).

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ F.A. Hayek, *The Political Order of a Free People*, 2.

the supreme power built during the evolution of the monarchy were abandoned as unnecessary. In this way constitutionalism and the rule of law have been shunted aside. Exactly this development led to a tragic illusion: “The tragic illusion was that the adoption of democratic procedures made it possible to dispense with all other limitations on governmental power. It also promoted the belief that the ‘control of government’ by the democratically elected legislature would adequately replace the traditional limitations.” But Hayek stated, “The sovereignty of the law is not to be confused with the sovereignty of the Parliament.”¹⁹ In contemporary democracies the need to have majorities to support particular programs in favor of particular special groups introduces a new element of partiality and arbitrariness:

The cause of complaints is not that the governments serve an agreed opinion of the majority, but that they are bound to serve the several interests of a conglomerate of numerous groups... Never, indeed, in the whole of history were governments so much under the necessity of satisfying the particular wishes of numerous special interests as is true of government today... It is at least conceivable, though unlikely, that an autocratic government will exercise self-restraint; but an omnipotent democratic government simply cannot do so... Such a bargaining democracy has nothing to do with the conceptions used to justify the principle of democracy.²⁰

In conclusion, to be acceptable to classical liberalism, a democratic government cannot be the government of a majority claiming to do whatever it wants. It is not the majority but always the law that should rule. This is the great principle of the rule of law. Hayek invited us to return to this tradition in order to save democracy. Moreover, he proposed to substitute for the term “democracy” the term “demarchy”. The Greek word *αρχειν*, in fact, indicates government according to law. Hayek proposes a legislative assembly limited to enacting general norms, composed of men and women between forty-five and sixty years of age, who would remain in parliament for fifteen years and could not be reelected. But perhaps this practical proposal is marginal and what is really important is that Hayek exactly anticipated the troubles of today’s democracies.

Hayek’s works aim to create the basis for a new classical liberal culture that allows a role for the state. In contrast, Bruno Leoni goes beyond the Hayekian position, searching for a model of civil society that does not require a state at all.

¹⁹ Ibid. 3.

²⁰ Ibid. 99.

Bruno Leoni on Democracy

Leoni's reflections on the relationship between power and the state are at the basis of a totally new and libertarian political philosophy. His criticism of the concepts of government, democracy, and power led him to question the political and ethical value of democracy. The end of the Marxist utopia and of most of its practical political applications cannot simply be explained by affirming the superiority of the democratic paradigm. Democracy, in fact, critically analyzed, shows defects very close to those of socialism. The question is whether the market system, protecting individual liberty, is compatible with state intervention and with redistribution of resources in exchange for votes. According to Leoni, state intervention threatens individual liberty through legislation and economic planning. For this threat, popular rule and universal suffrage bear direct responsibility. Leoni regarded this fact as one of the paradoxes of democracy.

Leoni began his analysis by arguing against justifications for violence. If coercion is neither philosophically nor ethically defensible, why should we be resigned to it and accept it in the political realm? Leoni proposed two conceptions of power: the first is based on political decisions as group decisions and therefore centered on coercion,²¹ and the second is founded on the reciprocal recognition of individuals' fundamental rights and therefore is "centered on the idea of non-coercive co-operation and on the decrease of the role of government."²² The first idea of power describes political power as it is, while the second one, on the contrary, contains the Leonian ideal of a society virtually without coercion.

While Hayek, even though uneasy about a democracy that failed to realize the difficult balance between individual liberty and collective choices, still believed in the vital spirit of democracy, Leoni held that public choices are inherently coercive. Democracy is considered responsible for the growth of the functions of the state and for the shift from a minimal state, the

²¹ For the first definition, see B. Leoni, *Lezioni di dottrine dello Stato* (Soveria Mannelli, Italy: Rubbettino, 2004); B. Leoni, "The Meaning of "Political" in Political Decisions", *Political Studies* 3 (1957), 225-39.

²² M. Stoppino, "L'individualismo integrale di Bruno Leoni", in B. Leoni, *Scritti di scienza politica e teoria del diritto* (Milan: Giuffrè, 1980), p. xxxiii. Leoni developed the second idea of power during the 1960s. Cf., B. Leoni, "Diritto e politica", *Rivista internazionale di filosofia del diritto*, 1 (1961), 89-107; "Oggetto e limiti della scienza politica", *Il Politico*, (1962), 741-56.

classical liberal ideal, to a maximal state.²³ How much room do public choices leave to the individual? Does living in a democracy and having the right to vote for representatives mean being free?

Leoni faced the difficult topic of democracy from a realistic perspective. He rejected the theory of democracy held by the public choice school, for example, in James Buchanan and Gordon Tullock's 1962 book *The Calculus of Consent*. Beginning from the premise of methodological individualism, they faced the problem of individual rational choice when founding a political community.²⁴ They stated that the mechanism of voting inside the political arena is of the same nature as consumer choice on the market. But Leoni savagely criticized this analogy. He began from the premise that public choices always imply coercion. The term "common will" is itself contradictory if it is intended to refer to individuals who are members of a community:

If political matters are precisely those that do not allow of more than one choice, and if, moreover, there is no way of discovering by some objective method which is the most suitable choice for a political community, we ought to conclude that political decisions always imply an element that is not compatible with individual freedom, and therefore not compatible with the true representation of the will of those people whose choice has possibly been rejected in the decision adopted.²⁵

Majority rule itself is not considered in accordance with individual freedom of choice. To criticize democracy, Leoni started from an analysis of collective choices that is deeply influenced by his individualistic premises. According to Leoni, collective choices are the counterpart of organicist theories of the state; that is, considering the state as an independent entity capable of taking decisions.²⁶ On the contrary, to Leoni, the decision-making process should always be approached from the perspective of methodological individualism. But political decisions are group decisions, that is, decisions

²³ The libertarian criticism holds that material equality, which requires a state redistributor of wealth, is incompatible with respect for fundamental rights of liberty and property. (see Hans-Hermann Hoppe, Leonard Liggio, and Murray Rothbard).

²⁴ J.M. Buchanan and G. Tullock, *The Calculus of Consent* (Ann Arbor, MI: University of Michigan Press, 1962).

²⁵ B. Leoni, *Freedom and the Law* (Princeton, NJ: Van Nostrand, 1961), 120. In this regard, Leoni takes up the considerations raised by Joseph Schumpeter in *Capitalism, Socialism and Democracy*.

²⁶ See B. Leoni, "The Meaning of 'Political' in Political Decisions".

where the individualist perspective is deformed: “single decisions reached by several individuals for a whole group.”²⁷ In a representative political system the dissenting minority must bear unwillingly the decisions of the majority, and without unanimity the only logical instrument to enforce a group decision is coercion. Gustave de Molinari asked whether the dissenting minority should be subject to the will of the majority.²⁸ In his view, property owners should not passively submit to taxation by a socialist majority.²⁹

Furthermore, Leoni’s criticism of democracy was founded on ideas about elitism advanced by Gaetano Mosca, Vilfredo Pareto, and Robert Michels, who showed that the democratic system favors the emergence of small hegemonic groups able to direct the political life of the community.³⁰ If politics is the realm of collective choices, it follows that the attempt to equate individual behavior on the market to individual voting in the political arena fails totally. On the market, one always gains something in exchange for payment, but when voting in the political arena, the dissenting minority receives little in exchange for its votes. So long as political choices remain collective choices, economics and politics must be considered deeply different.³¹

According to Leoni, majority rule has no justification at all. He argued against a view held by Anthony Downs that majority rule can be defended on the premise of the equal weight of each voter. Moreover, added Downs, it is much better that the majority of the voters impose decisions on the minority than the minority on the majority. Leoni countered that the equal weight of each voter is a meaningless assumption. If by equal weight we mean equality of opportunity to assert one’s opinion, it is clear that those who are in the minority are not able to defend their positions on an equal basis as those in the majority. Majority rule is not compatible with an equal opportunity to defend one’s interests and opinions. In a representative political system, the dissenting minority simply submits to the decisions of the majority. But, Leoni wrote, “There was no more magic in the number 51 than in the number 49.”³² Regarding the idea that it is better that the majority rules the

²⁷ Ibid. 232.

²⁸ R. Raico, *Classical Liberalism and the Austrian School* (Auburn, AL: Ludwig von Mises Institute, 2012), 283.

²⁹ G. De Molinari, *On the Production of Security* (New York: Center for Libertarian Studies [1849] 1977).

³⁰ B. Leoni, “The Meaning of ‘Political’ in Political Decisions” 47.

³¹ Ibid.

³² B. Leoni, “Political Decisions and Majority Rule”, *Il Politico* 4 (1960) 726.

minority, Leoni was well aware that élites theory demonstrated that it is exactly democratic representation that encourages the emergence of cunning minorities able to direct political life. The general situation emerging, Leoni stated, “may be termed... a legal war of all against all or, to adopt the famous expression used by the eminent French economist and political scientist Frédéric Bastiat, the great fiction of the state, ‘by which everyone seeks to live at the expense of everyone else’.”³³ What really mattered to Leoni is individual liberty and not democracy. In fact, “no vote trading could be sufficient to put each individual in the same situation as the operators who freely buy and sell goods and services in a competitive market.”³⁴

Leoni also criticized the concept of representation itself. The spreading of collectivist politics is related to the coming of democracy and to the change in the concept of representation that led to a crisis of liberty. According to the medieval idea of representation, “representatives were conceived of as mandataries of the people, whose task was to formulate and to carry out the people’s will.” In their turn, “the people were not conceived of as a mythical entity, but rather as the ensemble of the individuals in their capacity as citizens.”³⁵ In medieval England, “people summoned by the king to Westminster were conceived of as proper attorneys and mandataries of their communities.” Leoni found it meaningful that representation in the Common Council of the king did not necessarily imply that decisions had to be taken according to majority rule. In some cases, unanimity was required, and the early medieval version of the famous principle of no taxation without representation was intended as “no taxation without the consent of the individual taxed.”³⁶ Referring to these historical considerations, Leoni emphasized that in the past the idea that groups simply representative of other people would impose collective choices seemed unnatural. The representatives were agents of other people and acted according to their will. Yet nowadays, according to Leoni, representation is completely different. The linkage between the representative and the represented, he stated, is only a fiction. The representatives are seen as interpreters of the general will and the common interest. But Leoni did not believe in this fiction and points out that in contemporary democratic systems representation does not really link politicians to citizens. Actually, delegation and representation differ greatly. Political scientists attempt to justify democracy, but they lack an

³³ Ibid. 730. Cf. F. Bastiat, *Selected Essays on Political Economy* (New York: Van Nostrand, 1964) 144.

³⁴ Ibid. 733.

³⁵ B. Leoni, *Freedom and the Law*, 112.

³⁶ Ibid. 118.

individualistic perspective. They believe modern representation enables people to participate in the legislative process and in the administration of their country, in accord with individual freedom of choice. Leoni, quoting an old Italian adage, “Who has the power makes the law,” asked, What of those who do not have power? According to Leoni,

Blind acceptance of the contemporary legal point of view will lead to the gradual destruction of individual freedom of choice in politics as well in the market and in private life, for the contemporary legal point of view means the increasing substitution of group decisions for individual choices and the progressive elimination of spontaneous adjustments between not only individual demands for and supplies of goods and services, but all kinds of behavior, by such rigid and coercive procedure as that of majority rule.³⁷

The democratic process in society paves the way for small hegemonic groups that in the long run control all of political life, and also creates the basis for invasive legislation. In every democracy, there are different kinds of organizations, movements, parties, and small lobbies that control so-called democratic political life. Leoni knew very well the élite theory of Mosca, Pareto, and Michels, and by referring to this theory he was able to identify the role of pressure groups involved in the democratic game and in the redistribution of benefits. “The historical crisis of liberalism,” Leoni wrote, “is due to the advent of universal suffrage and, therefore, to the supremacy on the political scene of groups and categories aiming to modify individual situations through a legislation imposed by the majority.”³⁸ It is clear that Leoni’s analysis has affinities with a libertarian perspective and with the Rothbardian description of the state as composed of various political élites.³⁹

Leoni criticized the basis of the liberal democratic state: representation. Rejecting the idea of representation and aware that the democratic state can destroy individual freedom, he tried to found the state on different premises. In many ways Leoni was the first to elaborate the idea, today generally accepted among those in the libertarian tradition, that democracy is

³⁷ Ibid. 129.

³⁸ B. Leoni, “Un recente tentativo di ‘moralizzazione’ delle scienze sociali”, *L’industria* LXVI, 1 (1951) 63.

³⁹ “If the State is a group of plunderers, *who* then constitutes the State? Clearly the ruling elite consists at any time of (a) the full-time *apparatus* – the kings, politicians, and bureaucrats who man and operate the State; and (b) the groups who have maneuvered to gain privileges, subsidies, and benefits from the State. The remainder of society constitutes the ruled.” M.N. Rothbard, *For a New Liberty*, (Auburn, AL: Ludwig von Mises Institute, [1973] 2006) 64.

incompatible with safeguarding individual liberty. Leoni's effort to show the incompatibility between democracy and individual freedom influenced subsequent libertarian thought, for example, the work of Hans- Hermann Hoppe, for whom democracy is a "god that failed."⁴⁰

It is majority rule itself that is incompatible with individual freedom of choice. If coercion is inherent in collective decisions, and if a society is freer the less coercion there is, the solution is to minimize collective decisions.

There is far more legislation, there are far more group decisions, far more rigid choices... far fewer individual decisions, far fewer free choices in all contemporary political systems than would be necessary in order to preserve individual freedom of choice... I am convinced that the more we manage to reduce the large area occupied at present by group decisions in politics and in the law, with all their paraphernalia of elections, legislation, and so on, the more we shall succeed in establishing a state of affairs similar to that which prevails in the domain of language, of common law, of the free market, of fashion, of customs, etc., where all individual choices adjust themselves to one another and no individual choice is ever overruled. I would suggest that at the present time the extent of the area in which group decisions are deemed necessary or even suitable has been grossly overestimated and the area in which spontaneous individual adjustments have been deemed necessary or suitable has been far more severely circumscribed than it is advisable to do if we wish to preserve the traditional meanings of most of the great ideals of the West... We ought always to remember that whenever majority rule is unnecessarily substituted for individual choice, democracy is in conflict with individual freedom. It is this particular kind of democracy that ought to be kept to a minimum in order to preserve a maximum of democracy compatible with individual freedom.⁴¹

When the Soviet Union collapsed, the conventional wisdom suggested that Western democracy was the inevitable wave of the future. During the Cold War, liberal democracy confronted collectivism. The dominant view held that no room for choice remained: all states ought to adopt democracy. As often happens, this conventional wisdom was mistaken. As we learn from Hayek and Leoni, democracy rests on the same collectivist premises as socialism. The impossibility of a centrally planned economy is an application of a general rule also applicable to centrally planned legislation. Legislation

⁴⁰ H.H. Hoppe, *Democracy: The God That Failed* (New Brunswick, NJ: Transaction, 2001).

⁴¹ *Ibid.* 129-31.

that overwhelms and menaces individual liberty is the result of majority rule that represents “the people’s will.” Democracy is a political order that promised to liberate humanity but, on the contrary, led cunning minorities to emerge and systems of taxation and legislation to expand. The defects of democracy seem to be very similar to those of socialism. It is difficult to reject economic central planning as inefficient and at the same time support the democratic option, based as it is on state intervention. The alleged choice between centralized socialism and liberal democracy is a false binary. The true alternative to collectivism is not democracy; it is instead the decisions of individuals in a free market, engaging in exchange for their mutual benefit and settling disputes through peaceful methods of resolution. It is Bruno Leoni in particular to whom we owe this fundamental insight.

