

ABSTRACT : file riassunto in lingua inglese

Libertà e Sicurezza : la tesi del trade off dal punto di vista dei modelli economici

The aims of my thesis is to face a very important methodological issue : the supposed relationship of trade-off between the freedom and the security of citizens. I chose to deal with this topic not only for its great importance in the paradigm of the economic imperialism, but also for its topicality in problems which affect us first-hand nowadays. In the introduction, I explain some key points of the methodological approach based on economic imperialism, trying to contextualize the trade-off within this particular framework. The phenomenon of the economic imperialism had its origin in the thirties of the 1900, at a time when the economic science began to divest itself of his social purposes and denied any close connection with ethical or moral principles. It was in this period that the economic science underwent a metamorphosis that changed it into a discipline characterized by formal axioms and procedures of deductive character. Economy appears nowadays too inclined to use, often incorrectly, its means of research and analysis to investigate problems that previously belonged to other disciplines. These disciplines, especially the social and political ones, became the subject of a “colonization” made by the Economic science, which excessively expanded beyond its boundaries delimited. The problem that arises is that the economic tools, based on rational choice theory, are not suited to analyse ethical, political, and above all, legal issues. Therefore, when the Economy science provides this unusual analysis, contradictions must be solved. This situation occurs in the case of the trade-off relation between freedom and security in a modern state. In the first chapter I explain the views of some political scientists about the trade-off thesis, summarizing views of those who doubt the validity of the thesis, and also of those who believe in the need to balance the two elements of the trade-off. The scholars of whom I have analyzed the essays are Adrian Vermeule, Richard

Posner, Jeremy Waldron, Robert Cass Sunstein and Rahul Sagar. Vermeule lists the reasons why the thesis of the trade-off is disproved by experimental verification, explaining the reason for his opposition to the trade-off thesis and to the thoughts of scholars who have formulated it, since he is convinced of the impossibility of being able to properly place a policy on the frontier of freedom, as it is extremely difficult to assess every policy with all the effects and the consequences that it causes. Vermeule and Posner in the book *“Terror in the Balance: Security, Liberty, and the Courts”* claim that, in order to protect its citizens, the government can and should use every legal instrument that is efficient, so that the value obtained through the increase of security will exceed the losses caused by the decrease of freedom. Therefore, they argue that the security and liberty trade-off is not unavoidable, but possible object of balance. Waldron analyses the issue from a perspective different from the Vermeule and Posner ones, since he tries to strike a proper balance between freedom and security, defending the rationality of the relationship between the two variables and elucidating the fact that this rational counterweight between the variables has to be achieved with the knowledge of every fact in its variability and unexpected consequences that can occur; otherwise, the only result will be an unfair restriction of the civil freedoms. Sagar investigates the matter placing in his analysis the primary objective to find all the causes that make the balance unrealizable. Indeed -he says- not only the balance between freedom and security is not realized, but also there is radically asymmetrical and unbalanced structure, in which citizens live in a condition of submission to the state system; the origin of this imbalance is defined by the author in the idea of so-called “state secrecy”, that is the legal bond that legitimizes the government or the parliament of a country to keep secret information on specific cases. To overcome the problem of state secrecy, Sagar proposes to use the so-called “circumvention” method, although it is difficult to implement, that is that attitude of the media of “eluding” the executive power, which is beyond its control, through real “leaks”, put in place with the complicity of some important elements, that belong to the same executive branch. Sunstein tries to develop a genuine theory of the balance

between freedom and security, but he add that, in order to be viable, this theory must be carefully modified by differentiating the situations where it is necessary to prevent the control of information by the government, and the other situations in which, instead, it is more appropriate to maintain a certain degree of federal control of the sensitive information. In a second text, called “Fear and liberty”, Sunstein argues that the cause of the trade-off mechanism is the consequence of a wrong perception of the “risk factor” by the layman, which, unaware of the reality of facts, convinces himself of being in a state of threats, regardless of the fact that the situation that he faces is actually dangerous or not. The average citizen, animated by such wrong and misleading belief, enters into a spiral from which he is no longer able to get out, because his fearful and insecure state of mind is encouraged by other members of the community where he lives, or by the public authorities and the media. Therefore, Sunstein is convinced that the only possible solution to come out of this spiral is to face the evidence that support the perception of fear. In the second chapter, after having illustrated the thesis of the trade-off between liberty and security as a model of application of the basic principles of economic imperialism, I investigate a case study of this thesis: the case of the justification of torture. The thorny paths which bear discussion are mainly two: first, the fact that many nations of the world refused categorically to sign specific agreements that are prohibitive of the use of techniques of mistreatment, such as the United Nations Convention against torture, which was enforced on 26 June 1987, that was signed by only 132 of the 193 UN member states. The second critical issue to notice is the tendency of many countries, even those where torture and ill-treatment of any kind are legally prohibited, to leave unapplied these constitutional principles. Therefore, despite the fact that the international legal system prohibits torture, at least in its most general views, nowadays torture tends, paradoxically, to persist. I dwell on the case of *Extraordinary renditions*, all those operations, secretly planned by the USA government, which began to be implemented with particular frequency after the 9/11, by the secret services. This program consists in the illegal and forcible transfer by CIA of suspected terrorists linked to Islamic terrorist organizations,

outside the U.S. territory, towards countries where the techniques of torture are not infrequently practiced and are not banned by law. Thus they become subjects of inhuman interrogation methods involving the use of coercion, torture and abuse. In the chapter I analyse the evolution of this practice, the collaboration of other countries beyond this, and the number of victims of these operations. After the analysis of this practice, my attempt in the chapter is to provide an answer to the following question: does the trade-off thesis justify the use of torture as a mean to provide greater security to citizens, protecting them from suspects and alleged pseudo-terrorists who may threaten their safety? The problem being considered is the legitimacy of this practice, the indifference and the disregard for human rights even a dangerous terrorist has the right to claim, and the excessive restriction of the liberty of the population, in order to reach the objective of protecting population against these dangerous individuals. At the end of the chapter I claim that it is not possible to ascertain whether the trade-off thesis justifies or not the use of torture. However, if we accept the validity of the trade-off, should then we accept forms of coercion and deprivation of fundamental rights such as torture? If we try, instead, to eliminate the fear in the population, to limit of the power of government, then we cannot accept the trade-off, or we may accept it in a feeble form, preventing government from the practice of torture. In fact, as explained in the conclusion of my thesis, the real question is whether the trade-off thesis is valid, independently of the fear of citizens. The goal that I have tried to accomplish in writing this essay is to clarify on what basis the government can legitimately reduce the private space of freedom, and whether such an intrusion is the only way to live in peace and safety. Security policies should not rely upon the trade-off if don't want to cause more fear, and even more, when we don't have the slightest assurance that the restrictive measures put in place by the government effectively increase the security of citizens.