DOI: https://doi.org/10.36280//AFPiFS.2023.2.20

ARCHIWUM FILOZOFII PRAWA
I FILOZOFII SPOŁECZNEJ
2023/2

Łukasz Dominiak[1]
Nicolaus Copernicus University in Torun, Poland

Proceeds of Crime, Punishment, and Libertarianism[2]

1. Introduction

It is commonly believed that gains made in connection with crime should be forfeited from their beneficiaries.[3] But would such disgorgement be consistent with the libertarian ethics?[4] Recently, one of the most prominent libertarian scholars, professor Walter Block, took up the question of whether indirect proceeds of crime should be held by their beneficiaries under libertarianism.[5] In favour of the thesis that disgorgement of assets acquired indirectly from crime is incompatible with the libertarian ethics, Block argued, *inter alia*, that, since the libertarian principle of horizontal proportionality

[1] ORCID number: 0000-0001-6192-8468. E-mail address: lukasdominiak80@gmail.com; cogito1@umk.pl

[2] This research was funded in whole or in part by the National Science Centre, Poland, Grant number 2020/39/B/HS5/00610. For the purposes of Open Access, the author has applied a CC-BY public copyright licence to any Author Accepted Manuscript (AAM) version arising from this submission.

[3] Following Herbert Broom, a fundamental legal maxim has it that 'no man should take advantage of his own wrong'. See: H. Broom, *A Selection of Legal Maxims*, Philadelphia 1874, p. 279. Compare also, more specifically to 'every legal system would accept as axiomatic that an offender should not enjoy the profits of his criminal activities' by David McClean. See: D. McClean, *Seizing the Proceeds of Crime: The State of the Art*, "International and Comparative Law Quarterly" 1989/2, p. 334. For more on the question of disgorgement of proceeds of crime under current legal systems see, *inter alia*, S.N.M. Young (ed.), *Civil Forfeiture of Criminal Property: Legal Measures for Targeting the Proceeds of Crime*, Cheltenham 2009; B. Vettori, *Tough on Criminal Wealth: Exploring the Practice of Proceeds from Crime Confiscation in the EU*, Dordrecht 2006; E.M. Guzik-Makaruk (ed.), *Przepadek przedmiotów i korzyści pochodzących z przestępstwa* [Eng. *Forfeiture of fruits and proceeds of crime*], Warszawa 2012; K. Postulski, M. Siwek, *Przepadek w polskim prawie karnym* [Eng. *Forfeiture in Polish criminal law*], Kraków 2004; D. Bunikowski, *Przepadek korzyści pochodzących z przestępstwa jako środek karny* [Eng. *Forfeiture of proceeds of crime as a punitive measure*], "Prokuratura i Prawo" 2008/5; I. Rzeplińska, *Konfiskata mienia: Studium z historii polityki kryminalnej* [Eng. *Seizure of property: A study in the history of criminal policy*], Warszawa 1997.

[4] The question might immediately arise: What is the libertarian ethics or libertarianism for that matter? Taking into consideration the fact that there are two main versions of libertarianism, that is, left- and right-wing-libertarianism, and that within each of these versions there are many individual thinkers who differ from one another, let alone across the two versions, it might not be entirely clear what libertarianism as such or the libertarian ethics is. There are two possible answers to this question, each being a dodge to a degree. The first one is that for the purposes of the present paper the concept of the libertarian ethics is simply understood to mean the ethics put forward by the main opponent herein, that is, Walter Block. This ethics stems from the libertarianism of Murray Rothbard as expressed mainly in his *The Ethics of Liberty* and further developed by Block himself in his numerous writings. The second answer is that what I am really after here is only a hard core of many of those various shades and streams of libertarianism, that is, the principle of property acquisition via the Lockean labour-mixing method, the principle of justice in voluntary transfer and the principle of rectification of injustice as well as the implications of these principles for the legitimacy of keeping some kinds of ill-gotten gains, specifically proceeds of crime.

[5] W.E. Block, *Libertarian Punishment Theory and Unjust Enrichment*, "Journal of Business Ethics" 2019/1, pp. 103–108.

commands equal punishment for equal crimes, additional seizure of assets acquired indirectly from some of such crimes would conflict with this principle and therefore be unjust. In support of his main argument, Block deployed a series of ingenious thought experiments that were supposed to both pump the intuition that indirect proceeds of crime should be kept by the criminals and demonstrate how confiscating such gains would clash with various tenets of libertarianism.

The present paper argues – *contra* Block – that forfeiture of assets acquired indirectly from crime is compatible with the libertarian ethics. The distinction between punishment and restitution recognized by Block and other libertarian scholars, the libertarian principle of justice in transfers, Murray Rothbard's solution to the problem of criminal accession, and John Locke's labour theory of property would provide, together with the fact that an offence has been committed in the first place, a sufficient basis for justifying disgorgement of indirect proceeds of crime. More specifically, the paper contends that: (1) forfeiture of gains acquired in connection with crime is better understood in terms of restitution than punishment and so Block's main argument from the horizontal proportionality does not even apply to the problem; (2) in cases involving transfers of property, defects of voluntariness explain why proceeds of crime should be forfeited by criminals; (3) in cases involving criminal accession, the lack of such defects explains why ill-gotten gains should be disgorged; and finally (4) in cases involving misappropriation of another's labour, the Lockean labour theory of property, according to which labour is ownable, explains why criminals should not enjoy any proceeds of their crimes at all.

The paper is organized in the following way. Section 2 draws a distinction between punishment of the criminal and restitution of the victim's property, showing that confiscation of direct proceeds of crime falls predominantly within the latter category. Section 3 applies libertarian principles of justice in transfer to the question of who owns indirect proceeds of crime. Demonstrating how such an analysis unfolds in some typical cases and showing that it supports the conclusion that indirect proceeds of crime are owned by the victim, section 3 argues that confiscation of such proceeds also falls predominantly within the category of restitution, not punishment, and so is immune to Block's charge that it leads to unequal punishment. Section 4 presents more difficult scenarios involving criminal accession and labour mixing. Drawing on Rothbard's less known contributions, civil and common law of accession, and the Lockean labour theory of property, this section argues that also in those more complex cases indirect proceeds of crime should be forfeited by criminals, at least in part. Section 5 concludes.

2. Proportional punishment, restitution, and direct proceeds of crime

Let us commence our inquiry into the compatibility between libertarianism and disgorgement of indirect proceeds of crime by spelling out the reasons why Block is opposed to such measures. Besides various contextual points pertaining to specific cases of advantages gained in connection with crime that will be elucidated and confronted in the process of our argument, the main problem that besets forfeiture of indirect proceeds of crime, according to Block, is that it distorts the horizontal proportionality of punishment.[6] If two offenders commit similar offences, justice requires that they

[6] It is important to note at the very outset of the discussion that the libertarian theory of punishment within which we are operating is best classified – with some caveats that will become apparent shortly – as a *retributive theory of punishment*. Its clearest formulation can be found in Robert Nozick's essay *Retributive Punishment*, according to which retributivism

receive similar punishment, or so claims Block. However, if one of them is more lucky or entrepreneurial than the other and gains more from his offence, then seizing his indirect profits would amount to punishing him more severely than his counterpart. As pointed out by Block:

> [Disgorgement of indirect profits of crime] is incompatible with the freedom philosophy. Why? This is due to an extrapolation of Rothbard's insight about proportionality. He focused on vertical equity. Crimes of different severity should be treated proportionately. If a crime is twice as severe as another, it should be punished doubly. But libertarian law, I contend, requires both horizontal and vertical equity. Let us now consider the latter. Two people, A and A', steal a typewriter from B and B'. Or, two criminals steal $5 and buy a lottery ticket, call them C and C'. All four, A and A' and C and C' pay their full penalties, discussed under the second type of Draconianism. However, A and C are lucky. The manuscript typed by A sells for a million dollars, the one by A' is worthless. C wins zillions in the lottery, the ticket purchased by C' is worthless. Horizontal equity requires that A and A', C and C', be treated exactly equally. After all, they committed precisely the same crime. To deal with them differently, for something that occurs after the crime, would be unjust. It would be to treat equals unequally. It is unlibertarian. It violates horizontal equity.[7]

As we are going to argue in this section, this is untenable. Forfeiture of indirect proceeds of crime does not distort horizontal equity. However, in order to see why it does not have such a distortive effect on horizontal proportionality of punishment, it is helpful to first investigate the reasons why offenders are not allowed to keep direct proceeds of crimes, for example, the goods that they stole. That they are indeed not allowed to keep such proceeds is entirely uncontroversial as far as libertarianism is

---

is 'the view that people deserve punishment for their wrongful acts in accordance with r x H, independently of the deterrent effect of such punishment' and that 'the underlying rationale of retribution (...) is punishment inflicted as deserved for a past wrong' where 'the punishment deserved depends on the magnitude H of the wrongness of the act, and the person's degree of responsibility r for the act, and is equal in magnitude to their product, r x H'. See: R. Nozick, *Retributive Punishment*, in: *Philosophical Explanations*, Cambridge 1981, pp. 363–366. Retributivism is hardly the only libertarian theory of punishment out there. In another paper (*Is the Rothbardian Theory of Punishment Retributive?*) "Roczniki Filozoficzne" 2023/3, forthcoming. I argue – against the received view – that despite the lip service paid by Rothbard to punishment as "an act of retribution after the crime has been committed", his theory, due to the role it assigns to the victims in determining the proper punishment, is better classified as a *corrective theory of punishment*". See: M.N. Rothbard, *Law, Property, and Air Pollution*, in: *Economic Controversies*, Auburn 2011, p. 381. For, after full restitution is paid to the victim, what is still needed is the punitive element. However, instead of giving all offenders what they deserve, the punitive element assures that victims are made square for the wrongs they suffered and so amounts to recognizing victims' right to sell the deserved punishment to offenders or even absolve criminals completely. As pointed out by Rothbard, under his theory of punishment, the victim "could simply forgive the criminal, and that would be that. Or (...) the victim or his heir could allow the criminal to *buy his way out* of part or all of his punishment". See: M.N. Rothbard, *The Ethics of Liberty*, New York 1998, p. 86. Randy E. Barnett calls this scheme of punishment a punitive restitution. Which takes us to yet another libertarian theory of punishment, that is, Barnett's famous *pure restitution theory of punishment*, according to which the only essential point of "punishment" is that the victim deserves to be made equal for her loss rather than the criminal deserves to suffer and thus there is no room whatsoever for adding a punitive element or requiring double payments from the offender. See: R.E. Barnett, *Restitution: A New Paradigm of Criminal Justice*, "Ethics" 1977/4, p. 288. Hence, under this model, 'restitution is scarcely a punishment as long as it is merely a matter of returning stolen goods or money'. W. Kaufmann, *Without Guilt and Justice*, New York 1973, p. 55. Finally, there is a variety of the libertarian theory of punishment that is deeply entrenched in consequentialism or utilitarianism rather than deontology. Probably the most renowned exponent of this economic or *utilitarian theory of punishment* amongst libertarians is David D. Friedman, for whom 'legal rules are to be judged by the structure of incentives they establish and the consequences of people altering their behavior in response to those incentives', while the main 'purpose of the criminal law is deterrence'. See: D.D. Friedman, *Law's Order: What Economics Has to Do with Law and Why It Matters*, Princeton 2000, pp. 11, 234. Now it should be clear that the argument for disgorgement of proceeds of crime would look different on each of these accounts of punishment, especially on the last two theories as compared with the first two on which I actually focus in the present paper as Block's argument mainly falls within the retributive-corrective paradigm.

[7] W.E. Block, *Libertarian*…, p. 105.

concerned. After all, says Rothbard: 'the criminal cannot be allowed to keep the reward of his crime'.[8] Similarly, Block himself contends that 'it is only the tip of the iceberg that A [the thief] be forced to return the item he took from B'.[9] Now why is that?

Following Block, suppose that B owns a typewriter that is then stolen by A. Why is it that 'clearly part of the proper restitution is to take the typewriter from A and give it back to B?'.[10] Certainly, it is because B still owns the typewriter and the fact that this item is now in A's possession does not change this state of affairs. It does not change it, because according to the libertarian ethics one can become an owner of a resource only in one of the following ways: (1) by homesteading it, that is, by mixing one's labour with a resource that is unowned; (2) by receiving it via voluntary transfer from someone who owns it; (3) by producing it, that is, by mixing one's labour with a resource one already owns and thereby improving or changing it, or (4) by acquiring it as a matter of rectification of injustice.[11] Since A did not acquire the typewriter in any of these ways, A could not have become its owner by taking it into his possession. Thus, even if dispossessed, B never stopped being its owner. Hence, returning the typewriter to B is simply enabling B to repossess the resource that has never ceased to be his rightful property. Specifically, returning the typewriter to B is *not* enabling B to acquire *ownership* thereof via the fourth method, that is, as matter of rectification of the injustice committed by A, for that would falsely imply that A divested B of the latter's title to the typewriter by stealing it so that B could now reacquire such title as a matter of rectification. Nothing of this sort happened. Neither B lost his title to the typewriter, nor A acquired it via theft, nor, finally, A forfeited it as a matter of rectification. Hence, crucially, whatever proportional punishment A deserves for his crime, recovering the typewriter is not in itself part of it. Of course, not allowing for the recovery of the typewriter would be unjust, but recovering it does not in itself punish A, it simply enables the victim to recapture his rightful property and therefore takes nothing from the offender that would belong to him as a matter of right.

---

[8] M.N. Rothbard, *The Ethics*…, p. 58.

[9] W.E. Block, *Libertarian*…, p. 104.

[10] W.E. Block, *Libertarian*…, p. 104.

[11] As pointed out by Nozick: 'If the world were wholly just, the following inductive definition would exhaustively cover the subject of justice in holdings. 1. A person who acquires a holding in accordance with the principle of justice in acquisition is entitled to that holding. 2. A person who acquires a holding in accordance with the principle of justice in transfer, from someone else entitled to the holding, is entitled to the holding. 3. No one is entitled to the holding except by (repeated) applications of 1 and 2. (...) The existence of past injustice (previous violations of the first two principles of justice in holdings) raises the third major topic under justice in holdings: the rectification of injustice in holdings'. See: R. Nozick, *Anarchy, State, and Utopia*, Oxford 1974, p. 151. More substantively, for Steiner, 'there are only four ways for a person to acquire titles to things: (i) by his appropriating (not more than an equal portion of) unowned things; (ii) by his transforming other self-owned things into those things; (iii) by his having the title to those things voluntarily transferred to him by their owners; and (iv) by his having the titles to those things transferred to from their owners in redress for their having violated his rights'. See: H. Steiner, *An Essay on Rights*, Oxford 1994, p. 251–252. In turn, according to Rothbard, for resources to become owned, 'they must first be obtained by individual actors in one of these ways. (...) A man owns himself; he appropriates unused nature-given factors for his ownership; he uses these factors to produce capital goods and consumers' goods which become his own; he uses up the consumers' goods and/or gives them and the capital goods away to others; he exchanges some of these goods for other goods that had come to be owned in the same way by others. These are the methods of acquiring goods that obtain on the free market, and they include all but the method of violent or other *invasive* expropriation of the property of others'. See: M.N. Rothbard, *Man, Economy, and State*, Auburn 2009, p. 93. Clearly, the fourth method of acquiring ownership, that is, via rectification of "violent or other 'invasive' expropriation" is not mentioned here only because it does not 'obtain on the free market' on which 'no invasion of property takes place…, either because everyone voluntarily refrains from such aggression or because whatever method of forcible defense exists on the free market is sufficient to prevent such aggression". See: M.N. Rothbard, *Man*…, p. 1047).

To see that recovery of stolen property is not in itself a proper part of punishment, let us consider what the libertarian principle of proportional punishment really says. Writing first about self-defence, Rothbard points out that "the criminal, or the invader, loses his own right 'to the extent' that he has deprived another man of his (…) From this principle immediately derives the proportionality theory of punishment".[12] Then, applying this principle directly to the question of punishment, Rothbard confirms that as far as punishment is concerned, "we must therefore fall back upon the view that the criterion must be: loss of rights by the criminal 'to the same extent' as he has taken away".[13] And in another place "[w]e have advanced the view that the criminal loses his rights *to the extent* that he deprives another of his rights: the theory of 'proportionality'. We must now elaborate further on what such a theory of proportional punishment may imply".[14] Since the libertarian theory of proportional punishment unequivocally states, as we can see from the above quotations, that proportional punishment consists in depriving the criminal of his rights, then it clearly implies that recovering stolen property is not a part of proportional punishment, for doing so does not in itself deprive the criminal of his rights. After all, he did not acquire ownership of the stolen property and so he cannot now be deprived of it.

Of course, repossessing stolen property might involve additional actions, for example, entering the criminal's house or compelling him to return stolen property, that have to be authorized by the libertarian principle of rectification, that is, justified by the divestitive fact of the criminal having committed an offence in the first place and thereby forfeiting his rights. However, recovering stolen property as such does not in itself require that the criminal loses any of his rights and therefore cannot be a proper part of punishment as understood by the libertarian theory of punishment. Rather, it is part of what Block and Rothbard call restitution.[15] This is why in cases of theft "the criminal must pay 'double' the extent of theft: once, for restitution of the amount stolen, and once again for loss of what he had deprived another".[16] And this is also why in cases such as 'bodily assault, where restitution does not even apply, we can again employ our criterion of proportionate punishment'.[17]

It therefore follows that recovering direct proceeds of crime, specifically stolen property, is not governed by the principle of proportional punishment. It is instead authorized by the principle of restitution that in turn depends on the question of who is the rightful owner of what, the question settled by the libertarian principles of property acquisition. Thus, the distinction between punishing the offender and recovering his direct proceeds of crime maps onto the distinction between divesting the offender of his rights to the extent that he violated the victim's rights (or, in other words, between the fact of the offender forfeiting his rights to this extent) and simply repossessing what the victim has had the title to all along, without thereby divesting the offender of any rights. After all, the offender did not acquire a right to the stolen property of which he could now be divested. Hence, although governed by a different principle than proportionality in punishment, recovering direct proceeds of crime is clearly consistent

[12] M.N. Rothbard, *The Ethics*…, p. 80.
[13] M.N. Rothbard, *The Ethics*…, p. 88.
[14] M.N. Rothbard, *The Ethics*…, p. 85.
[15] On restitution, punishment and libertarianism, see also R.E. Barnett, *Restitution: A New*…; R.E. Barnett, J. Hagel (eds.), *Assessing the Criminal: Restitution, Retribution, and the Legal Process*, Cambridge 1997.
[16] M.N. Rothbard, *The Ethics*…, p. 88.
[17] M.N. Rothbard, *The Ethics*…, p. 89.

with the libertarian ethics. It is therefore advisable to see how this fact plays out in the case of indirect proceeds of crime, that is, gains acquired via productive employment of direct proceeds of crime.

3. Voluntary transfers and indirect proceeds of crime

In order to see that forfeiting indirect proceeds of crime would also be compatible with libertarianism, it will pay to apply the distinctions introduced above in a piecemeal manner and first address cases that are predominantly governed by the principle of justice in transfers. For, once identified and isolated, these cases will prove to be the easiest to handle and after showing that indirect proceeds of crime should be recoverable in such easy cases, we will be better equipped to address more perplexing scenarios involving not only the principle of justice in transfers but also the Lockean principle of labour mixing.

Thus, suppose that B owns a violin worth of $1,000 that is then stolen by A. One month later there is an unprecedented surge in violin prices and A sells the stolen violin to C for $15,000. On the other hand, the less entrepreneurial D who also stole exactly the same kind of violin from E, misses the opportunity and keeps the violin for so long that its price drops to the original level. Each offender is apprehended and convicted for 5 years in prison, yet while D loses the violin, A is forced to repay the $15,000.

Now, as we saw above, Block suggests that this ruling would be unjust, for A and D committed exactly the same crime of stealing identical violins, so they should be punished equally. Recovering the violin worth of $1,000 from D while seizing $15,000 from A amounts to punishing them unequally or horizontally disproportionately and thus unjustly. But this charge, as we learned in the previous section, entirely misses the point. For it is clear that D does not own the violin (E still owns it) and so recovering it does not in itself divest D of any rights. It is therefore not a proper part of his punishment, the latter being 5 years in prison. This, however, should come as no surprise since the violin constitutes direct proceeds of D's crime and as such – as we already established – should be recoverable by E. A more difficult question is what should be done with the $15,000, which constitute indirect proceeds of A's crime?

The first thing that should be established here is who owns the $15,000. We already know that one can own the $15,000 if, and only if, one acquires it in accordance with one of the four libertarian principles of justice. However, in the case under consideration there is only one eligible contender for this title amongst the said principles, namely the libertarian principle of justice in transfer. Hence, for A to own the $15,000, it would have to be transferred to him in a proper way, that is, voluntarily.[18] Did C transfer the $15,000 to A voluntarily? Before getting straight to the correct answer, consider first the following question: Should the violin (which constitutes direct proceeds of A's crime) be recoverable by its owner, B, from whom it was stolen by A? We already know that the answer to this question is in the affirmative. But if so and if the violin

[18] As pointed out by Steiner, under libertarianism "it's the authentic consent of both the parties to an exchange that is commonly held to vindicate their respective titles to what they acquire from that exchange. In exchanging, each of them waives his/her right to what they transfer to one another, and each thereby acquires the right to what is transferred. For that waiver-generated transfer to be normatively valid – for the waiver to effect the transfer of the right in question – it is necessary that it be done 'voluntarily'". See: H. Steiner, *Asymmetric Information, Libertarianism, and Fraud*, "Review of Social Economy" 2019/2, p. 100.

were actually recovered by B, then innocent C[19] would be left both without the violin and without the $15,000. Besides this situation being clearly unfair, C would have never agreed to transfer his $15,000 to A if C knew that the violin was stolen.[20] It is therefore plausible to conclude that C's transfer of $15,000 to A in exchange for the violin was involuntary due to ignorance, deception or fraud.[21] Thus, the $15,000 did not cease to be C's rightful property and as such should be recovered by C. In turn, taking into consideration the fact that A does not have title to the $15,000, recovering it cannot in itself divest A of any rights and as such cannot be a proper part of A's punishment, the latter being 5 years in prison.[22] Hence, not only is A not the owner of indirect proceeds of his crime (that is, the $15,000), but also recovering them by C has no bearing on the horizontal proportionality of A's punishment, which is equal to punishment received by D, namely 5 years in prison.

Now let us extrapolate these findings to a case put forward by Block himself – the only case in his paper that is predominantly governed by the principle of justice in transfers. Block invites us to suppose that:

> A stole $5 from B and with those funds purchased a winning lottery ticket with a prize of a billion dollars. Would A have to pay B one dime of that amount of money? No, because, by stipulation, he has already fully paid the four elements of his punishment. Then, he may keep his (…) gigantic lottery prize he won with B's money.[23]

Yet, as we saw above, the victim recovering stolen property is not a proper part of the criminal's punishment because it does not in itself involve forfeiture of his rights. Thus, although it is true that A does not have to share his prize with B, this conclusion does not follow from the fact that, contrary to what Block supposes, A was already fully punished. Additionally, even though it is true that A does not have to share his prize with B, this proposition does not entail that A may keep it. For it is clear that while the stolen $5 should be recoverable by B, the prize may in turn be recovered by the owner of the lottery. In order to see that, let us consider the following reasoning.

Looking at the four libertarian principles of justice, which one is the proper candidate to govern this case? Once the right question is asked, it becomes clear that in the case at hand the libertarian principle of justice in transfer applies and so that the lottery prize should be recoverable by its transferor. For, first of all, we know that 'A stole $5 from B and with those funds purchased a winning lottery ticket'. Thus, the owner of

---

[19] I am not considering here the scenario in which C is an accomplice of A.

[20] Again, C is not A's accomplice.

[21] Many libertarians believe that fraud defeats voluntariness of exchanges and so invalidates title transfers. For example, Nozick writes: "The subject of justice in holdings consists of three major topics. The first is the 'original acquisition of holdings' (…) The second topic concerns the 'transfer of holdings' from one person to another (…). Under this topic come general descriptions of voluntary exchange, and gift and (on the other hand) fraud". See: R. Nozick, *Anarchy*…, p. 150. And in another place Nozick identifies the minimal libertarian state as 'a state limited to protecting persons against murder, assault, theft, fraud, and so forth'. R. Nozick, *Anarchy*…, p. 162. Similarly, Rothbard writes that: 'Under our proposed theory, would fraud be actionable at law? Yes, because fraud is failure to fulfill a voluntarily agreed upon transfer of property, and is therefore implicit theft'. See: M.N. Rothbard, *The Ethics*…, p. 143. According to Steiner, those libertarians are opposed to fraud specifically because they assume that it invalidates title transfers due to ignorance that it causes in the transferor. "In addition to being unforced and uncoerced, a further condition necessary for an action to be voluntary is assumed to be that it is not falsely informed, or what I'll simply call 'ignorant'... The buyer's waiver, to be normally valid, must also be performed non-ignorantly. And the duplicity of the fraudulent seller is held to defeat that condition". See: H. Steiner, *Asymmetric*…, p. 100.

[22] For the sake of simplicity, I eliminate the fact that selling stolen property and defrauding another might be independent crimes deserving of additional punishment.

[23] W. Block, *Libertarian*…, p. 104.

the lottery, let us call him C, transferred the ticket to A mistakenly thinking that the money belonged to A. More specifically, A's misrepresentations induced C to part with the ticket. If C knew that the money had been stolen, C would not have transferred the ticket to A. Thus, C's transfer of the ticket to A was involuntary and therefore void due to ignorance, deception or fraud. The title to the ticket and to what it represents did not travel from C to A and so the prize should be recoverable by C (the option totally missed by Block in his analysis) – not as a part of A's punishment but as C's rightful property, that is, as part of restitution to another victim of A. Since the title to the stolen $5 likewise stayed with its rightful holder, that is, B, we can conclude – *contra* Block – that all direct and indirect proceeds of A's crime should be recoverable by their legitimate owners, that is, A's victims.

4. Labour mixing and indirect proceeds of crime

Let us now turn to cases of indirect proceeds of crime that are predominantly governed by the Lockean principle of labour mixing and see how libertarianism can deal with these scenarios. In order to present a fully-fledged argument, it is again advisable to move in steps from easier cases to more demanding ones. Let us therefore start with a scenario in which the thief improves the stolen property by mixing his labour with it. Should he be allowed to keep the improved property, recover what he added on to it or perhaps be compensated for his improvements? Before we answer this question, it is important to note that the kind of case about to be analysed has the additional advantage of providing us with an argument from authority, for we know what solution is suggested by none other than Rothbard.

Thus, Rothbard considers a series of scenarios involving an innocent third party who: (1) adds a radio to a car stolen by another; (2) repairs the engine of such a car, and (3) erects a building on a land 'stolen' by another.[24] When these improvements are made by a *bona fide* third party, then, according to Rothbard, the rule should be their separability from the stolen property. If the improvements are separable, then the third party may recover them. If they are not separable, then the owner of the stolen good should keep the improved property without paying any compensation to the innocent improver.[25] However, what if the improver is the thief himself? Rothbard writes:

> It might be objected that the holder or holders of the unjust title (in the cases where they are not themselves the criminal aggressors) should be entitled to the property which they *added* on to the property which was not justly theirs, or, at the very least, to be compensated for

[24] M.N. Rothbard, *The Ethics*…, p. 59; M.N. Rothbard, *Justice and Property Rights*, in: M.N. Rothbard, *Economic Controversies*, Auburn 2011 p. 363.

[25] These paragraphs in Rothbard's *The Ethics of Liberty* suggest that there is a fifth method of property acquisition under libertarianism, which method is missed by many libertarian authors, that is, accession. See: M.N. Rothbard, *The Ethics*… But this issue merits a separate paper. I fill in this lacuna in my forthcoming paper *Accession, Property Acquisition, and Libertarianism*. On the general exposition of the doctrine of accession, see, *inter alia*, T.W. Merrill, *Accession and Original Ownership*, "Journal of Legal Analysis" 2009/2, pp. 459–510; E.G. Lorenzen, *Specification in the Civil Law*, "Yale Law Journal" 1925/1, pp. 29–47; P. Stein, *The Two Schools of Jurists in the Early Roman Principate*, "Cambridge Law Journal" 1972/1, pp. 8–31; M.A. Barker, *The Doctrines of Specification and Accession: Potential Bases for Legal Ownership through Labour?*, "Economic and Industrial Democracy" 1983/1, pp. 1–17; Q. Zhang, *Accession on the Frontiers of Property*, "Harvard Law Review" 2020/7, pp. 2381–2402; T. Wood, *A New Institute of the Imperial or Civil Law. With Notes Shewing in some Principal Cases amongst other Observations, How the Canon Law, the Laws of England, and the Laws and Customs of other Nations differ from it*, London 1721, pp. 111–117.

such additions. In reply, the criterion should be whether or not the addition is *separable* from the original property in question.[26]

It therefore follows, by contraposition, that if holders of unjust titles are themselves criminal aggressors, then the objection that they might be entitled to the improvements which they added onto the property of another or at least to the compensation for adding them does not even arise. It does not matter whether such improvements are separable or not, for the separability rule is proposed only as the answer to the objection concerning innocent third parties who 'are not themselves the criminal aggressors'.[27] In other words, if the improvers are themselves thieves or trespassers, they should neither be entitled to the improvements, nor to the compensation for them, regardless of whether the improvements are separable or not. Moreover, not only should forfeiture of such improvements not be limited by the separability rule, but Rothbard does not suggest that it should be limited by any other rule. Certainly, his example of a house erected on the "stolen" land[28] intimates rejection of the disparity of value rule, for the value of the house can easily exceed the value of the site and yet the criminal aggressor should not be entitled to the house, let alone to the entire real estate.

But why should thieves and trespassers not be entitled to the improvements that they added on to the invaded property or to compensation for adding them? Although Rothbard is silent on this matter, we know that one general answer[29] to this question has it that it is because the offender is viewed as voluntarily transferring the title to his labour and materials to the owner of the invaded property.[30] For even though the offender knows that the property that he is improving belongs to another and that no remuneration for his work is promised to him, he nonetheless willfully and knowingly expends his labour and resources on the property. As a result, not only his labour and materials attach to this property, but also his title to these factors of production travels to the owner of the invaded property.[31]

In this regard, consider arguments put forward in one of the leading American accession cases, *Silsbury v McCoon*, in which the court (after the attorney for the plaintiffs in error, N. Hill, Jr.) provided a careful examination of civil and common law of fraudulent accession.[32] Thus, we can read in *Silsbury v McCoon* that "in dealing with the case of fraudulent accession, [civil law] treated the workman as one who had 'volunteered to serve the owner of the material without compensation'".[33] And, quoting the authority of Arnold Vinnius, the court points out that "he who 'knows' the material is another's,

---

[26] M.N. Rothbard, *The Ethics*…, p. 59.

[27] M.N. Rothbard, *The Ethics*…, p. 59.

[28] M.N. Rothbard, *The Ethics*…, p. 59; M.N. Rothbard, *Justice*…, p. 363.

[29] Another answer would point to deterrence. As we can read in *Silsbury v McCoon*, the objective at which 'the distinction between *bona fide* and *fraudulent* accession (…) aims is not to *punish* wrongdoers, but to *prevent* their aggressions, and thus render punishment unnecessary'. See: *Silsbury Calkins v McCoon Sherman*, judgment of Court of Appeals of the State of New York of 1 July 1850, New York Reports (N.Y.), Vol. 3, 379, jump page 380. Deterrence might be even more important than the answer given in the main text above, but it seems less pertinent to my argument, which concerns deontologically-oriented libertarianism of Block and Rothbard.

[30] For example, one can read in *The Digest of Justinian* that 'if a person were to build with his own materials on someone else's site, he would make the building the property of the owner of the site, and if he knew that the site belonged to another, he would be treated as voluntarily parting with his materials so that even if the house should collapse, he would have no *vindicatio* for them'. See: *The Digest of Justinian*, A. Watson (ed.), Philadelphia 1985, book 41, section 1, item 7 (Gaius, *Common Matters or Golden Things, book 2*).

[31] Compare Ł. Dominiak, *Unjust Enrichment and Libertarianism*, "Polish Political Science Review" 2022/10, pp. 7–8.

[32] *Silsbury v McCoon*…

[33] *Silsbury v McCoon*…, p. 380.

ought to be considered in the same light as if 'he had made the species in the name of the owner', to whom also he is to be understood to have 'given his labor'".[34] Now common law follows the same path, for it "treats those who expend money or labor upon the property of another, 'knowing that they are doing wrong', as volunteer servants or agents, and compels them 'to lose what they thus expend'".[35] Moreover, similarly to the aforementioned suggestion by Rothbard that no rule should limit forfeiture of goods improved in connection with crime, neither civil nor common law "regard the 'degree of change' wrought in the property as material, but allows the owner to follow it through all its changes; e.g. where 'money' has been fraudulently converted into 'land or stocks'".[36]

The reasoning offered in *Silsbury v McCoon* seems perfectly consistent with the spirit of libertarianism and with what was said about voluntariness of title transfers in the previous section. When the thief or trespasser knowingly and willfully expends his labour and resources on the property of another, there is nothing that defeats voluntariness of his actions. Neither force nor fraud is present. Similarly, there is no coercion or ignorance. Hence, it seems plausible to conclude that under libertarianism the offender who improves the property of another by voluntarily expending his labour and resources upon it, thereby passes his title to the labour and resources to the owner of the property and that this is the reason for which he should, as suggested by Rothbard, lose the improvements he makes.[37] Again, as we can read in *Silsbury v McCoon*, fraudulent accession 'allows the owner to appropriate the labor of the wrongdoer'.[38] On the other hand, when a *bona fide* improver unknowingly transforms the property of another, the voluntariness of his actions is negatively affected by his excusable ignorance and so the title to his labour and resources does not pass to the owner of the property. Thus, the same reason also explains why according to Rothbard a bona fide improver should keep his separable improvements.[39]

In the light of all this, it is possible to consider the following case offered by Block.[40] The curious thing about this case is that Block presents it as an instance of unjust enrichment,[41] while it is clearly an example of indirect proceeds of theft. Moreover, thinking that he is arguing against the doctrine of unjust enrichment, Block contends that the thief should forfeit the statue carved of the stolen granite, not realizing that by arriving at such a verdict, he is implicitly embracing the very institution he explicitly repudiates, that is, forfeiture of indirect proceeds of crime. At any rate, writes Block:

> Suppose A steals a hunk of granite from B's quarry. Whereupon A carves a magnificent statue with that stolen material. The implication of 'unjust enrichment' is that B may not have that particular piece of granite back from A because he, B, would be unjustly enriched. The value of the carved granite is so much greater than the raw granite of which B was robbed. Instead, A would only have to repay B for the value of the raw granite, plus the other libertarian aspects of punishment. This is clearly unjust, based on the libertarian philosophy.

---

[34] *Silsbury v McCoon*…, p. 380.
[35] *Silsbury v McCoon*…, p. 380.
[36] *Silsbury v McCoon*…, p. 380.
[37] Compare Ł. Dominiak, *Unjust Enrichment*..., p. 8.
[38] *Silsbury v McCoon*…, p. 380.
[39] Although it does not explain why a *bona fide* improver should lose his inseparable improvements without compensation – which only shows that Rothbard's separability rule should be revised so that it can tally better with other libertarian principles of justice. This, however, is a topic for another paper. See my forthcoming paper *Accession, Property Acquisition, and Libertarianism*.
[40] W.E. Block, *Libertarian*…, pp. 106–107.
[41] Compare my analysis of this case under the heading of unjust enrichment in my paper Ł. Dominiak, *Unjust Enrichment*…, pp. 7–8.

> That particular rock belongs to B, and what A did to 'improve' it is of no nevermind (…). But, we can go further than that and reject the entire doctrine of 'unjust enrichment' as incompatible with libertarianism. Then, A must be compelled to return that specific carved rock.[42]

Block's solution seems both intuitively correct and consistent with the logic of libertarianism. Even though the thief created a new product, an article of an entirely different species than the original hunk of granite; even though he brought into existence something much more valuable than the stolen rock, that is, a magnificent statue, "the 'degree of change' wrought in the property" should not matter if it "has been fraudulently converted into" something else (*Silsbury v McCoon*, 3 N.Y. 379, 380). Neither should it matter that the thief did all of this by mixing his own labour and personality with the raw material. He should nonetheless forfeit the statue and the labour embedded therein to the owner of the granite chunk, for according to 'a natural Right,' all the above reasons might count for something only in the case in which 'the Work was designed for his [the workman's] own Use, and where he erroneously, and by Mistake thought the Matter was his own'.[43] On the other hand, if the manufacturer's work 'was intended for the Use of any other, it is his upon the same Terms for whose Use it was working (…). [And the workman] shall lose his Labour and Workmanship; the whole shall accrue to the Use of the Owner'.[44] Similarly, according to the libertarian principles of justice, the thief voluntarily mixed his labour with the property of another and so passed his title thereto to the owner of the stolen good. The manufacturer was not coerced or deceived to transform the hunk of granite into the statue. Nor was he ignorant about the nature of what he was doing or the legal status of the rock. Nevertheless, he knowingly and willfully decided to expend his labour on the property of another. Hence, in the absence of any conditions that could defeat voluntariness of his actions, he thereby passed the title to his labour to the owner of the granite chunk.

Certainly, Block would like to argue that this case proves incompatibility of libertarianism with the doctrine of unjust enrichment.[45] However, as mentioned earlier, since the granite statue falls within the category of indirect proceeds of crime (after all, the hunk of granite was stolen and then transformed into a magnificent statue, whose value increased dramatically), then by saying that the manufacturer must be compelled to return it, Block inadvertently justifies confiscation of indirect proceeds of crime rather than a rejection of the doctrine of unjust enrichment. This in turn stands in clear contradiction with Block's explicit pronouncements that according to libertarianism indirect proceeds of crime may be kept by criminals. Certainly, if A and A' both stole analogous hunks of granite but only A transformed it into a magnificent statue, then according to Block's criterion of horizontal equity, they both should suffer the same loss. Forcing A to return a much more valuable statue while requiring A' only to return the hunk of granite would violate horizontal equity, as Block understands it. And yet Block believes that A should be compelled to return the statue nonetheless. Hence, Block implicitly rejects his own conclusions that under libertarianism indirect proceeds of crime may be kept by the criminal.

---

[42] W.E. Block, *Libertarian*…, pp. 106–107.
[43] T. Wood, *A New*…, p. 111.
[44] T. Wood, *A New*…, p. 111.
[45] That Block also fails to prove any significant incompatibility between libertarianism and the doctrine of unjust enrichment is the main thesis of another paper of mine: Ł. Dominiak, *Unjust Enrichment*…, pp. 1–13.

Besides the granite statue case and the lottery ticket scenario, Block considers one more example[46] of indirect proceeds of crime that is supposed to support his position that under libertarianism such proceeds may be kept by criminals. The case concerns typing a manuscript on a stolen typewriter:

> Suppose A steals a typewriter from B. Then clearly part of the proper restitution is to take the typewriter from A and give it back to B. But what if A has typed a manuscript using that stolen typewriter (and on paper that belongs to A) – does A have a legitimate property title to the manuscript? If not, what should be done with the manuscript?

According to Block, if the damage to the typewriter is the same in the case of typing the manuscript and in the case of simply playing with the keys, then:

> Apart from any other aspects of the retribution against A the criminal, the same response is visited upon him whether he types a manuscript, or, presses the keys to the same extent without writing anything. Here, the focus is entirely on what damage, if any, A did to B's typewriter, during the time it was in his possession. Since it is the same by stipulation, the penalty would be the same in either case. The bottom line is that the criminal may keep his manuscript.[47]

Before trying to wrestle with Block's case directly, it is advisable to clarify a few matters. First of all, it is important to note that the case does not concern the question of who should have the copyright in the manuscript, for Block and his fellow libertarians reject the very idea of intellectual property.[48] Thus, the question must be answered solely in terms of personal property interests. This limitation already draws the sting from Block's case because the manuscript becomes just another chattel like the previously considered cars, tickets or granite statues. Upon realizing this, we can see that notwithstanding first appearances to the contrary, the entire heavy lifting in the case is done not by the thief pouring his creative genius into the manuscript, but by the parenthetical remark that the manuscript is typed on the thief's own paper. Change this assumption, give the paper to the victim and ownership of the manuscript will also vest in the victim as it did in the case of the granite statue. Then the manuscript scenario will resemble a famous quandary discussed in *The Institutes of Justinian*:

> If Titus writes a poem, or a history, or a speech on your paper and parchment, the whole will be held to belong to you, and not to Titus. But if you sue Titus to recover your books or parchments, and refuse to pay the value of the writing, he will be able to defend himself by the plea of fraud, provided that he obtained possession of the paper or parchment in good faith.[49]

Now the difference between this case and Block's modified thought experiment is that the victim in the latter scenario has an even stronger claim against the writer due to the fact that he stole the paper, whereas Titus obtained the parchment in good faith.

---

[46] Strictly speaking, Block also considers a case of the so-called internal criminal benefits, that is, comfort and reinvigoration derived by the thief from the stolen massage chair. However, since such benefits are not what is normally understood by proceeds of crime and since Block himself maintains that it is impossible "to alienate from the thief the comfort he derived from use of the massage chair" and so it impossible to forfeit such benefits, the present paper ignores this idiosyncratic extension of the notion of criminal proceeds. See: W.E. Block, *Libertarian*…, pp. 105–106.

[47] W.E. Block, *Libertarian*…, p. 104.

[48] On the libertarian theory of intellectual property, see: S.N. Kinsella, *Against Intellectual Property*, Auburn 2008; M.N. Rothbard, *The Ethics*…, p. 123–124; W.E. Block, *Defending the Undefendable II*, Auburn 2018, p. 223–229.

[49] *The Institutes of Justinian*, J.B. Moyle (ed.), Oxford 1913, pp. 1, 2, 33.

Thus, we can see that Block's manuscript scenario becomes problematic only in the case in which the thief types the manuscript on his own paper. Nevertheless, in exactly such a case we would be intuitively willing, along with Block, to assign the manuscript to the thief, not to the owner of the typewriter. The reason for that seems to be that the manuscript – in contradistinction to the granite statue that embodies the stolen granite, which in turn can be followed by its original owner through consecutive changes of kinds – does not, obviously, contain the stolen typewriter. However, on libertarian grounds, and particularly on the grounds of the Lockean labour theory of property, this rationale is only part of the story. For B, the owner of the typewriter, also owns whatever work the typewriter performs.[50] In other words, in the relevant juridical sense, the typewriter's work belongs to B or simply is B's labour. Thus, when A produced the manuscript using B's typewriter, A produced it by mixing B's labour with A's paper and so B's labour became embedded in the manuscript.[51] Hence, although the manuscript obviously does not contain B's typewriter – in the sense in which the statue contains the stolen granite – it does contain the typewriter's labour, which in turn belongs to B. Of course, the manuscript also contains A's labour and paper. But this only shows that under libertarianism there are two, not one, claim holders *vis-à-vis* the manuscript: A and B. The only question that remains is how to divide their respective claims to the manuscript.

Therefore, even though our intuition pulls in the same direction as Block's, that is, towards the conclusion that 'the criminal may keep his manuscript', it is decidedly not

[50] Although so much should be clear for any libertarian thinker subscribing to the labour-mixing theory of appropriation, it will not hurt to point out that Block himself fully embraces this reasoning when he says, for example, that "it seems clear that homesteading can be done indirectly (…). 'Mixing' is not a synonym for 'touching'(…). Beetles, frogs, ants, worms, snakes, butterflies, caterpillars and other such species (…). We capture them (…). Thus we homestead and thus come to own these creepy, crawly creatures. Subsequently, we release the members of these species we have previously homesteaded and thus now own to do our homesteading of the land for us. If cows are adequate under mere ordinary circumstances to establish ownership, why not these slugs, insects and other varmints? We own these living things, they now 'work' for us, whether they know it or not". See: W.E. Block, M.R. Edelstein, *Popsicle Sticks and Homesteading Land For Nature*, "Romanian Economic Business Review" 2012/1, p. 10–11. On a more general note, the idea of owning labour performed by a resource solely by virtue of owning the resource lies at the very bottom of libertarianism and the labour-mixing theory of appropriation as evidenced by the fact that we own our labour by virtue of owning our bodies. As explained by Steiner: 'How do we get from the unencumbered ownership of our bodies to the unencumbered ownership of things external to them? The path of this argument is well trodden so let's take the easy part first. Our bodies are factories. They produce things like blood, skin, hair, etc. Self-ownership gives us the titles to these and protects our liberty to dispose of them, just as it does in the case of our non-renewable types of tissue (…). Similarly, our bodies produce energy. They convert body tissue into energy, some of which gets expanded in our acting (…). Portions of our expended energy are infused into parts of the external environment, transforming their features in various ways. Sometimes we claim these things for ourselves as the fruits of our labour (…). If the lumber and tools to which I'm about to transfer some of my body's energy are mine (and if I've not transferred my title to that energy), then claiming the wooden bench I thereby make as mine seems to be equally unproblematic'. See: H. Steiner, *An Essay*…, p. 233–234.

[51] This seems to be an important difference between libertarianism, which is based on the Lockean labour theory of property, and Roman law, which focuses on things (*res*). Thus, Roman law would not consider the case at hand as a problem of conflicting property interests, for the manuscript neither is a new thing produced from an old thing belonging to another (rather it is a new thing produced from an old thing belonging to the same person) nor is it an instance of one thing acceding to another thing, each having a different owner. On the other hand, libertarianism embraces the idea that labour – that is, energy rather than a tangible thing – can be owned and so infusing things with labour can vests us with property titles to things. As pointed out by Eric Mack commenting on the Lockean labour-mixing principle, 'if John has so mixed his labor with a bit of raw material–transforming, let us say, a branch into a nicely shaped and useful spear–the resulting spear embodies John's non-abandoned rightful held labor. Hence, if Tom comes along and makes off with that spear, Tom violates John's retained right over that invested labor. Since Tom cannot make off with that spear without making off with John's invested labor, we naturally say that John has a right to the spear vis-a-vis Tom'. See: E. Mack, *John Locke*, New York 2009, pp. 58–59. By the same token, since A cannot make off with the manuscript without making off with B's labour embedded therein, libertarians – in contradistinction to Romans – should say at least as much as that there are two competing property interests in the manuscript that should somehow be divided, preferably and most naturally by transforming one of them into a liability interest.

sufficient to say that 'the focus is entirely on (…) damage' and that 'apart from any other aspects of the retribution against A the criminal, the same response is visited upon him whether he types a manuscript, or, presses the keys to the same extent without writing anything'.[52] For, besides the damage to B's typewriter being 'the same by stipulation' in either case, in the former case, but not the latter, B also has a claim to his labour embedded in the manuscript. Thus, the bottom line is not that upon receiving his equal (in comparison with a case in which he simply presses the keys without writing anything) penalty, the criminal may *simply* keep the manuscript. For he must either additionally compensate B for B's labour that is embedded in the manuscript or abandon the manuscript altogether, returning thereby this inseparable part of it which still belongs to B. In neither case, however, can they keep all the proceeds of their crime.

5. Conclusions

The present paper tackles the question whether the libertarian ethics can justify disgorgement of indirect proceeds of crime. As the point of departure, Block's recent analysis of this question was chosen. According to Block, forfeiture of indirect proceeds of crime would be incompatible with the libertarian ethics. Two main arguments are put forward against this position. First, the crucial distinction is drawn between proportional punishment as it is understood by libertarians and restitution of the victim's rightful property. Demonstrating that disgorgement of indirect proceeds of crime is not a proper part of proportional punishment but instead constitutes restitution of the victim's rightful property undermines Block's main argument against forfeiting such assets, namely that doing so would violate the principle of horizontal proportionality in punishment. Second, it is submitted that the question of what should happen with indirect proceeds of crime, instead of being a question of retributive justice, is rather a question of distributive justice, that is, a question of who owns such proceeds according to the libertarian principles of justice in transfer and production. Paying close attention to these and derivative principles enables one to identify such owners. This in turn makes it possible to justify the proposition that – according to the libertarian ethics – indirect proceeds of crime should be forfeited by their beneficiaries, at least in part.

Proceeds of Crime, Punishment, and Libertarianism

Abstract: In his recent publication, Walter Block claims that disgorgement of indirect proceeds of crime is incompatible with libertarianism. The present paper argues that Block's claim is incorrect. In support of this position two general arguments are offered. The first one builds on the distinction between restitution and punishment, showing that forfeiture of assets derived indirectly from crime would not – contra Block – result in unequal punishment under retributive justice. The second one refers to libertarian principles of distributive justice and demonstrates that indirect proceeds of crime are owned by the aggrieved parties. Put together, these arguments conclusively show that the idea that indirect proceeds of crime should be forfeited is compatible with libertarianism.

Keywords: proceeds of crime, libertarianism, restitution, punishment

[52] W. Block, *Libertarian*…, p. 104.

BIBLIOGRAFIA / REFERENCES:

Barker, Melissa A. (1983), *The Doctrines of Specification and Accession: Potential Bases for Legal Ownership through Labor?*, Economic and Industrial Democracy, 4(1), 1-17.

Barnett, Randy E., Hagel, John (eds.), *Assessing the Criminal: Restitution, Retribution, and the Legal Process*, Ballinger Publishing Co., Cambridge, Mass.

Barnett, Randy E. (1977), *Restitution: A New Paradigm of Criminal Justice*, Ethics, 87(4), 279-301.

Block, Walter E. (2018), *Defending the Undefendable II*, Ludwig von Mises Institute, Auburn, Ala.

Block, Walter E. (2019), *Libertarian Punishment Theory and Unjust Enrichment*, Journal of Business Ethics, 154, 103-108.

Block, Walter E., Edelstein, Michael R. (2012), *Popsicle Sticks and Homesteading Land For Nature*, Romanian Economic Business Review, 7(1), 7-13.

Broom, Herbert (1874), *A Selection of Legal Maxims*, T. & J. W. Johnson & Co., Philadelphia.

Bunikowski, Dawid (2008), *Przepadek korzyści pochodzących z przestępstwa jako środek karny*, Prokuratura i Prawo, 5, 45-71.

Civil Forfeiture of Criminal Property: *Legal Measures for Targeting the Proceeds of Crime*, Simon N.M. Young (ed.), Edward Elgar, Cheltenham, UK.

Czwojda, Anna Czesława (2018), *Przepadek korzyści majątkowej w polskim prawie karnym*, E-Wydawnictwo. Prawnicza i Ekonomiczna Biblioteka Cyfrowa. Wydział Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego, Wrocław, Poland.

The Digest of Justinian (1985), English translation edited by Alan Watson, University of Pennsylvania Press, Philadelphia.

Dominiak, Łukasz, *Is the Rothbardian Theory of Punishment Retributive?*, forthcoming.

Dominiak, Łukasz, *Unjust Enrichment and Libertarianism*, Polish Political Science Review, forthcoming.

Friedman, David D. (2000), *Law's Order: What Economics Has to Do with Law and Why It Matters*, Princeton University Press, Princeton, N.J.

The Institutes of Justinian (1913), translated into English by J.B. Moyle, Clarendon Press, Oxford.

Kaufmann, Walter (1973), *Without Guilt and Justice*, Peter H. Wyden, Inc., New York.

Kinsella, Stephan N. (2008), *Against Intellectual Property*, Ludwig von Mises Insti¬tute, Auburn, Ala.

Lorenzen, Ernest G. (1925), *Specification in the Civil Law*, Yale Law Journal, 35(1), 29-47.

Mack, Eric (2009), *John Locke*, Continuum, New York.

McClean, David (1989), *Seizing the Proceeds of Crime: The State of the Art*, International and Comparative Law Quarterly, 38(2), 334-360.

Merrill, Thomas W. (2009), *Accession and Original Ownership*, Journal of Legal Analysis, 1(2), 459-510.

Nozick, Robert (1974), *Anarchy, State, and Utopia*, Blackwell Publishing, Oxford.

Nozick, Robert (1981), *Retributive Punishment*, in R. Nozick, Philosophical Explanations, Harvard University Press, Cambridge, Mass., 363-397.

Postulski, Kazimierz & Siwek, Marek (2004), *Przepadek w polskim prawie karnym*, Zakamycze, Kraków, Poland.

Przepadek przedmiotów i korzyści pochodzących z przestępstwa, (2012) Ewa M. Guzik-Makaruk (ed.), Wolters Kluwer Polska, Warszawa, Poland.

Rothbard, Murray N. (2011), *Justice and Property Rights*, in M. Rothbard, Economic Controversies, Ludwig von Mises Institute, Auburn, Ala., 347-366.

Rothbard, Murray N. (2011), *Law, Property, and Air Pollution*, in M.N. Rothbard, Economic Controversies, Ludwig von Mises Insti¬tute, Auburn, Ala., 367-418.

Rothbard, Murray N. (1998), *The Ethics of Liberty*, New York University Press, New York.

Rothbard, Murray N. (2009), *Man, Economy, and State*, Ludwig von Mises Institute, Auburn, Ala.

Rzeplińska, Irena (1997), *Konfiskata mienia: Studium z historii polityki kryminalnej*, Instytut Nauk Prawnych PAN, Warszawa, Poland.

Silsbury v. McCoon, 3 N.Y. 379 (N.Y. 1850)

Stein, Peter (1972), *The Two Schools of Jurists in the Early Roman Principate*, Cambridge Law Journal, 31(1), 8-31.

Steiner, Hillel (2019), *Asymmetric Information, Libertarianism, and Fraud*, Review of Social Economy, 77(2), 94-107.

Steiner, Hillel (1994), *An Essay on Rights*, Blackwell Publishers, Oxford.

Vettori, Barbara (2006), *Tough on Criminal Wealth: Exploring the Practice of Proceeds from Crime Confiscation in the EU*, Springer, Dordrecht, Netherlands.

Wood, Thomas (1721), *A New Institute of the Imperial or Civil Law. With Notes Shewing in some Principal Cases amongst other Observations, How the Canon Law, the Laws of England, and the Laws and Customs of other Nations differ from it*, Richard Sare, London.

Zhang, Quinn (2020), *Note. Accession on the Frontiers of Property*, Harvard Law Review, 133(2381), 2381-2402.