

# GIURISPRUDENZA E AUTORITÀ INDIPENDENTI NELL'EPOCA DEL DIRITTO LIQUIDO

STUDI IN ONORE DI ROBERTO PARDOLESI

A cura di F. Di Ciommo e O. Troiano

---

---

**IL FORO  
ITALIANO**

FONDATA NELL'ANNO 1876 DA ENRICO SCIALOJA

  
**LaTribuna**

*Questo volume è pubblicato con la sponsorizzazione  
dello Studio Legale Di Ciommo & Partners  
e di IP2Tech S.r.l. – Industria Partecipazioni Tecnologia*

© Copyright La Tribuna Srl – 2018

La Tribuna Srl | [www.latribuna.it](http://www.latribuna.it)

29121 Piacenza – Via Campo della Fiera, 4

Tel. 0523.46311 – Fax 0523.757219

Sono riservati per tutti i Paesi la traduzione, l'adattamento totale o parziale, la riproduzione con qualsiasi mezzo (inclusi i microfilm, i film, le fotocopie), nonché la memorizzazione elettronica.

# Giurisprudenza e autorità indipendenti nell'epoca del diritto liquido

Studi in onore di Roberto Pardolesi  
(A cura di F. Di Ciommo e O. Troiano)

## Introduzioni

F. Di Ciommo e O. Troiano.....	pag.	XI
Guido Calabresi <i>Roberto Pardolesi: Scholar, Teacher, Friend</i> .....	»	XIII

## Diritto ed economia nel mondo che cambia

Umberto Breccia <i>Incognite del pensiero giuridico contemporaneo. Identità e tradizioni. Ritorni problematici. Approdi insicuri</i> .....	»	5
Salvatore Mazzamuto <i>Il diritto post-moderno: un concetto inutile o addirittura dannoso?</i> .....	»	21
Pier Giuseppe Monateri <i>The Equivalence of Political and Economic Allocations</i> .....	»	29
Alessio M. Paces <i>Analisi economica del diritto: positiva e normativa</i> .....	»	35
Luca Nivarra <i>Diritto soggettivo e Giurisdizione</i> .....	»	57
Andrea Giannaccari <i>Norme tecniche e (concorrenza tra) ordinamenti giuridici. Un itinerario comparato</i> .....	»	65

Giorgio Resta		
<i>North v. Polanyi - Due paradigmi per un dialogo tra giuristi ed economisti</i> . . . . .	pag.	81
Antonio Gambaro		
<i>Fittizietà</i> . . . . .	»	97
Vincenzo Zeno Zencovich		
<i>Come il mondo dei dati cambia taluni riferimenti tradizionali del giurista</i> . . . . .	»	107

### Giudici e processo

Maurizio Paganelli		
<i>Il diritto giurisprudenziale tra (recente) passato e futuro (prossimo)</i> . . . . .	»	119
Francesco Di Ciommo		
<i>Può la giustizia essere ingiusta? Dalla giurisprudenza normativa alla giustizia del caso concreto, tra (in)certezza del diritto, imprevedibilità delle soluzioni, liquidità dei rapporti giuridici e dubbi di costituzionalità. Scritto in onore di Roberto Pardolesi</i> . . . . .	»	127
Enrico Scoditti		
<i>After Dogmatics: Rethinking Legal Knowledge</i> . . . . .	»	149
Umberto Violante		
<i>Analisi economica del diritto e giurisprudenza normativa.</i> . . . . .	»	155
Angela Arbore		
<i>Potere di controllo e disciplinare.</i> . . . . .	»	163
Giorgio Lener		
<i>Il nuovo “corso” giurisprudenziale della meritevolezza degli interessi</i> . . . . .	»	173
Domenico Dalfino		
<i>Le competenze civili del giudice onorario di pace dopo l’ultima riforma.</i> . . . . .	»	189
Giorgio Costantino		
<i>La delega al professionista ex art. 591 bis c.p.c. a (quasi) venti anni dal suo esordio</i> . . . . .	»	207

### Diritto dei contratti

Guido Alpa		
<i>Conceptions and definitions of contract.</i> . . . . .	»	227
Giuseppe Bellantuono		
<i>Comparing Contexts: Technical Standards and Contract Law.</i> . . . . .	»	235

Gianni Colangelo		
<i>Usura sopravvenuta: Cassazione e fallimento dello Sato</i> .....	pag.	259
Valentina Vincenza Cuocci		
<i>Fornitura di contenuti digitali e controprestazione non pecuniaria: luci e ombre sulla tutela del consumatore nella prospettiva del diritto contrattuale europeo</i> .....	»	269
Adolfo Di Majo		
<i>Forma dell'atto o regolamento del rapporto?</i> .....	»	283
Fabio Marchetti		
<i>La fiducia nella legge 112/2016 fra diritto dei tributi e diritto dei contratti</i> .....	»	287
Nicola Scannicchio		
<i>Mandatory Mediation in The European Consumer Directive Between Right Enforcement and Regulation of the ADR Industry</i> .....	»	299
Bruno Tassone		
<i>Le avoidance clauses dell'esperienza nordamericana: problemi e prospettive di una nuova ricerca</i> .....	»	319
Paolo L. Carbone		
<i>Contratti collegati, aliud pro alio, causa concreta: uno slancio verso il futuro o un ritorno al passato?</i> .....	»	337
Michele Graziadei		
<i>Collisioni transatlantiche: consenso e contratto nel trattamento dei dati personali</i> .....	»	361

### **Diritto della concorrenza**

Giuliano Amato		
<i>I fondamenti e i fini della concorrenza</i> .....	»	371
Cristoforo Osti		
<i>Roberto Pardolesi ed il Diritto della Concorrenza</i> .....	»	375
Francesco Caringella		
<i>Il sindacato del giudice amministrativo e le garanzie difensive nel procedimento antitrust</i> ..	»	385
Anna Lisa Bitetto Murgolo		
<i>Abuso di dipendenza economica: dal private al public enforcement!</i> .....	»	405
Aldo Frignani		
<i>Il Whistleblowing in Italia: la nuova legge n. 179 dimentica la concorrenza (e non solo)</i> ..	»	413

Gianluca Faella	
<i>Le efficienze nei casi di abuso: un'analisi economica e comparata</i> . . . . .	pag. 431
Massimiliano Granieri	
<i>Una lettura alternativa circa l'argomento della specificità dell'attività sportiva alla luce delle norme di concorrenza in Europa</i> . . . . .	» 451
Anna Chiara Mastrorilli	
<i>Excessive price nel diritto Antitrust Europeo e Nordamericano con particolare riferimento al mercato dei farmaci</i> . . . . .	» 463
Roger Van den Bergh	
<i>Efficiency based competition law and the new populism: the remake of a golden oldie</i> . . . .	» 471

### **Diritto commerciale**

Mario Libertini	
<i>Ancora a proposito di principi e clausole generali, a partire dall'esperienza del diritto commerciale</i> . . . . .	» 495
Giuseppe Niccolini	
<i>Su due sentenze in tema di responsabilità dell'accomandatario</i> . . . . .	» 525
Giuseppe De Marzo	
<i>Indennità d'espropriazione e valori aziendali</i> . . . . .	» 535
Daniela Caruso	
<i>Distribuzione (commerciale) e diritto: variazioni su tema</i> . . . . .	» 541
Tommaso Ubertazzi	
<i>Garanzie infragruppo e profili dinamici interni delle obbligazioni</i> . . . . .	» 551
Onofrio Troiano	
<i>Efficienza economica e crisi di impresa nella fase esecutiva del concordato preventivo in continuità</i> . . . . .	» 579
Enzo Maria Tripodi	
<i>L'alambicco del legislatore: il commercio su aree pubbliche dopo la legge di bilancio 2018</i> .	» 589
Antonio Iannarelli	
<i>Le articolazioni soggettive della prelazione agraria: quando una compiuta rivisitazione legislativa?</i> . . . . .	» 605
Alessandro Silvestrini	
<i>Le offerte concorrenti di cui all'art. 163 bis legge fallimentare</i> . . . . .	» 623

## Diritto bancario e finanziario

Francesco Capriglione <i>Incidenza degli NPLs sulla stabilità del sistema bancario. I possibili rimedi. . . . .</i>	pag. 635
Raffaele Lener <i>Spunti di riflessione sulla nozione di raccolta bancaria del risparmio nel nuovo mondo dei servizi di pagamento e della moneta elettronica . . . . .</i>	» 655
Mirella Pellegrini <i>Trasparenza bancaria, tecniche cognitive, educazione finanziaria . . . . .</i>	» 663
Luca Enriques – Alessandro Romano <i>Attivismo degli investitori istituzionali e teoria delle reti . . . . .</i>	» 677
Gioacchino La Rocca <i>Trattamento dei dati personali e impresa bancaria (Reg. UE 679/2016) . . . . .</i>	» 685
Raffaella Menzella <i>Il FinTech e le regole (una, nessuna o centomila?) . . . . .</i>	» 699
Marco Anecchino <i>La riduzione delle prestazioni pensionistiche complementari in corso di erogazione in conseguenza della carenza di “mezzi patrimoniali adeguati” dei fondi pensione. . . . .</i>	» 717
Chiara Medici <i>Consumatore, impresa “dipendente”, cliente - investitore: frazionamento o sintesi (problematica) della tutela del contraente debole? . . . . .</i>	» 729
Valentino Lenoci <i>I contratti finanziari derivati tra regole di validità e regole di condotta . . . . .</i>	» 747
Patrizio Messina <i>Non-Performing Loans e operazioni di cartolarizzazione: aspetti regolamentari italiani ed europei. . . . .</i>	» 765

## Proprietà industriale

Roberto Caso <i>Il diritto d'autore accademico nel tempo dei numeri e delle metriche . . . . .</i>	» 785
Giuseppe Colangelo <i>Analisi economica e proprietà intellettuale: il caso della riforma europea del diritto d'autore . . . . .</i>	» 797

Luigi Carlo Ubertazzi <i>Falsi d'autore e proprietà intellettuale</i> .....	pag. 831
--	----------

### Responsabilità civile

Francesco D. Busnelli <i>1958-2018: sessant'anni di responsabilità medica. Itinerari di confronto tra diritto e medicina per la tutela della salute</i> .....	» 857
--	-------

Giulio Ponzanelli <i>La nuova frontiera della responsabilità civile: la quantificazione del danno non patrimoniale</i> .....	» 873
---	-------

Vincenzo Carbone <i>Nascita indesiderata: anche il padre ha diritto al risarcimento dei danni.</i> .....	» 879
---	-------

Umberto Izzo <i>La perdita della vita come danno relazionale: analisi storico-comparativa di una convergenza transistemica</i> .....	» 887
---	-------

Paolo Pardolesi <i>La parabola rimediaria della responsabilità civile: dalla funzione compensativa a quella punitivo/sanzionatoria</i> .....	» 921
---	-------

Roberto Simone <i>La riscoperta della funzione deterrente della responsabilità civile oltre i risarcimenti punitivi</i> .....	» 931
--	-------

Luigi Lambo <i>I danni punitivi e l'intenzionalità dell'offesa</i> .....	» 943
---	-------

Alessandro Palmieri <i>"Welcome to the Hotel California". Suggestioni dal Golden State in tema di esperibilità dei rimedi in tort contro le piattaforme digitali di home sharing.</i> .....	» 951
--	-------

Antonio Davola <i>Veicoli Autonomi, Sinistri Stradali e Nuovi Modelli di Responsabilità Civile</i> .....	» 961
---	-------

Sergio Di Paola <i>Sport subacquee e regimi di responsabilità tra regole precauzionali, condivisioni dei rischi, obblighi di diligenza.</i> .....	» 983
--	-------

Giovanni Comandé <i>Responsabilità ed accountability nell'era dell'Intelligenza Artificiale.</i> .....	» 1001
---	--------

Paolo Laghezza <i>Un manuale giudiziale sulla responsabilità da cose in custodia?</i> .....	» 1015
--	--------



## Diritto di famiglia

Nicolò Lipari <i>I rapporti familiari tra autonomia e autorità</i> .....	pag. 1023
Antonello Miranda <i>Multiculturalism v. Multicommunitarism in the Italian Family Law. Some very brief considerations</i> .....	» 1031

## Miscellanea

Carlo Maria Barone – Anselmo Barone <i>Roberto Pardolesi e le collaborazioni su “il Foro italiano”: un breve excursus diacronico</i> ..	» 1055
Giovanni Pascuzzi <i>Insegnare all’Università</i> .....	» 1061
Andrea Proto Pisani <i>Note a margine di una vita universitaria</i> .....	» 1079
Ciro De Lorenzo <i>Splendori e miserie del notariato: biografia non autorizzata della funzione notarile</i> .....	» 1083
Alfredo Calderale <i>The Forest Law e The Charter of the Forest ai tempi di Enrico III Plantageneto</i> .....	» 1097
Francesco Macario <i>L’evoluzione del “genere istituzionale” nella manualistica per l’insegnamento del diritto privato</i> .....	» 1113
Giuseppe Tucci <i>Il razzismo e le nuove discriminazioni del diritto privato postmoderno</i> .....	» 1141

# The Equivalence of Political and Economic Allocations

*di Pier Giuseppe Monateri*

---

**Summary:** 1. Introduction. – 2. Definitions. – 3. The Theorem. – 4. Conclusions

---

## 1. INTRODUCTION.

The purpose of this paper is to analyze what happens when “violence”, threats and self-help are introduced into the economic models.

This argument has been treated many times within the so-called “Blackmail” debate (Brown, 1993) but never in a way so straightforward as I try to do here, and often with a set of moral, or legal presuppositions that have nothing to do with pure economic models.

The real matter at stake here is *not* blackmail, which has long been a subject distracting the attention of scholars, but global allocation, as it is molded by international relations. The framework of these relations has, indeed, a strong correlation (Schelling, 1960, p. 13) with blackmail in the process of coercion and bargain, but I think it needs a different appraisal. States, and other kinds of political agents, live in an “anarchical” context largely based on self-help (Waltz, 1979, p. 106). This continues to be true under the current developments in International Law (Koskenniemi, 2001).

All this implies that the states must produce the means of their own protection. Therefore in international politics, self-help is a main issue, and, of course, self-help is nothing but the actual or threatened use of force – violence – to assert, protect and defend interests.

From this standpoint, an internal legal order requires force to ensure rights, including Human Rights, and performances of duties, and so it needs force – violence – to produce a given legal and economic outcome. As a consequence, the difference between internal politics and local economic allocations, and international politics and global allocations, rests only in a different organisation of violence. It is the peculiar transparency produced by the setting of state actions that renders more visible and then necessary to analyze violence in the production of allocations. Henceforth, the real subject matter of this paper is an economic appraisal of international politics as a structure of anarchy, where political agents must recur to self-help to reach a global allocation of lands, powers and goods. But my aim is to show that starting from these premises much more general conclusions can be derived.

The argument takes the following paths: the second section introduces a small number of simple definitions, standard assumptions about rationality, and *one further assumption* that can be called the “assumption of rational attack and defense”.

From this, the third section builds an elementary theory of violent allocations, in the form of a theorem, from which the major conclusions are derived. The conclusions are then stated in the fourth-section, and the claim is:

a) Under standard assumptions there is no difference between a market allocation and a political allocation; and so that there is no inner superiority in a market allocation in comparison with a political one;

b) If we move away from these standard assumptions, then the only real economic problem becomes a “political” problem, and there cannot be efficient conclusions which are *independent* from an initial allocation of force and resources.

## 2. DEFINITIONS.

Let be

[def1]  $SM =$  a distributive social function producing pure “market allocations”

I.e., a social distribution of goods, which is the outcome of mere win-win transactions among parties exchanging their property rights to resources, in a way that if all the win-win transactions are allowed, then all resources will be allocated to their best social use, independently from any starting allocation, and the Net Social Gain will be positive.

def2]  $SP =$  a distributive social function producing pure “political allocations”.

This social function does not represent the outcome of contracts on property rights; at the opposite, it represents a social function, where every allocation happens violently: the goods are distributed *not* on the basis of the willingness to pay for them, or preference for liquidity, but on the basis of the possibility to recur to violence by the involved parties in this society.

In this way a definition of “The Political” is adopted as the choice between friend or foe, and so as the decision between alliance or war, where everything is determined by the pure capacity of a party to mobilize a force (by its *Mobilisierungsmacht*); i.e., on the pure possibility, or threat, of an actual use of violence.

This definition of the *Political* is selected because being the *strongest* definition ever given of it, if my theories hold for it, then they will also easily hold for weaker definitions.

In these terms the first definitions can be re-read as:

[def1b]  $SM =$  non-violent allocation

[def2b]  $SP =$  violent allocation

It is then clear enough that if  $SM$  is based on pure win-win transactions, then  $SP$  allows room for the possibility of win-lose transactions, *without* compensations: resources are simply at the disposition of the strongest, and, as such, there are not really *properties* but only *possessions*.

Then, let be

[def 3]  $NSG =$  The Net Social Gain

[def 4]  $BU =$  The Best User of a given resource for society

[def 5]  $WU =$  The Worst User of a resource for society

[def 6]  $r =$  any resource whatsoever

[def 7]  $v(r) =$  the value of that resource in terms of the expected utility for its use by each party as represented by  $u^1 \dots u^n$ , so that the  $v(r)^n$  will always be the  $u^n$ , i.e., the utility derived from its possession by its user; the optimal  $v(r)^*$  for society will then be equivalent to the expected utility of its best user.

Now, let be

[def 8]  $Atk$  = the cost of attacking another to take its possessions, so that  $Atk=f(c^i)$ : an attack by  $i$  is a function of its cost of attacking, i.e., of producing violence;

[def 9]  $Def$  = the cost of resisting an unwanted taking by another, so that  $Def=f(c^j)$ : the defence of  $j$  is a function of  $j$ 's costs of organising the defence; i.e., of producing violence.

So I can define

[def 10]  $A$  = the initial allocation, whatever it is

[def 11]  $\Omega$  = the final outcome, the final allocation produced by a social distributive function  $SM$  or  $SP$ .

It follows immediately that NSG is positive if  $\Omega > A$ , and negative in the opposite situation.

Finally, let be

[def 12]  $PAR$  = a pure world of Pareto, where NSG is just the algebraic sum of the parties' pay-offs, in comparison with

[def 13]  $KH$  = a world of Kaldor-Hicks where NSG is to be calculated only after ex post compensations for unwanted transactions, where

[Def 14]  $COMP$  = is the ex post compensation paid to a losing party in a win-lose transaction in a  $KH$ -world.

Then let's retain all the usual assumptions that parties here are fully rational, with complete knowledge, because those are the strongest assumptions supporting neo-classical market theories, in a way that, again, if my theories held in this case, they can also hold in case of weaker assumptions.

Finally *further* assume that:

[Assumption 1] The Assumption of Rational Attack and Defense

Given the above definitions [6,8,9]

if  $Atk = Def$ , then  $r$  will remain in its initial allocation

I.e., one can assume that, if  $\Delta$  represents the difference between  $Atk$  and  $Def$ , then Assumption 1 becomes that:

if  $\Delta = Atk^i - Def^j$ ,

if  $\Delta$  is positive, then  $i$  will take  $r$  from  $j$ ,

if  $\Delta$  is negative  $j$  will retain her possession.

This assumption is equivalent to the assumption that parties win only if their attack, for whatever reason, is better than their foe's defense.

In these definitions, it is also patent to presume that possessions are already assigned in one way or another. In the case of a totally new world, where no possession is already allocated, evidently one would have to compare only  $Atk^i \dots Atk^n$ , because all resources are yet to be taken, so that there is no defending or attacking party, but all parties will be symmetrically attacking one another for the possession of goods.

This assumption implies also that a party's capacity to recur to violence is a cost. The problem of violence is reduced to their possibility of mobilizing their forces, and that this possibility depends purely on their costs of mobilization, as the costs of using force, and that, all parties being equally rational, *victory or defeat depend only on the parties' investments in the use of force.*

This is true even if by nature a party is much physically stronger than the other. First of all, because to remain strong, one has to train and invest in its own fitness, and in the model there are no limitations to technology, so that the other party can freely invest in weapons, training and martial arts, etc., to enhance its respective force. Secondly,  $Atk$  and  $Def$  as costs may include intelligence, or other uncanny qualities, whose use is *costly* and whose utility can be improved by investments. So, here,  $Atk$  and  $Def$  are not exclusively physical force, but also all the intellectual ability to use force in the most efficient way to defeat one's foe, given the fight's particular circumstances.

If one party is naturally born stronger or quicker than another, in a neo-classical model, this simply means that this party will enjoy cheaper recourse to force, but this consideration does not alter the fact that the use of force here is a mere cost of production, not different from other costs of production, as long as the control of resources is at stake.

The only assumption made is, then, that if a party wins it is only because it used in a more efficient way its *Atk* or *Def*, considered as investments necessary to take or maintain control of resources.

If a party that is not investing anything in *Atk* or *Def*, this simply means that for this party, *r* is valueless.

Of course, in a real world situation, victory and defeat can depend on external variables, such as weather, acts of God, earthquakes or similar contingencies happening during the fighting. These elements can be represented by a probabilistic distribution “*p*”. But since, here, all parties are equally and perfectly rational, with a complete knowledge of the world, it is part of their investments in the use of force to take into account, and *discount*, these contingencies, and internalize them in their decisions about *Atk* or *Def*; so that adding “*p*” will only complicate the formulas, but not alter in any way the reasoning.

### 3. THE THEOREM.

Given the previous definitions and assumptions, the discussion starts from the standard situation in neo-classical models.

Then assume that the whole of society is composed by just two individuals, *i* and *j*, and that victory or defeat are simply a variable of the actual investment by each of them in their use of force, including intelligence, so that:

*If  $Atk = Def$ , then  $r$  remains where it is;*

*i.e., SP (above [def2: a distributive social function producing pure “political allocations” ] does not change the initial allocation  $A$ ), or, in other terms,*

*given SP, then  $A = \Omega$ .*

In this way, remember [Assumption 1] that

$$\Delta = Atk^i - Def^j,$$

*so that if  $\Delta$  is positive then  $i$  will take  $r$  from  $j$ ,*

*and if  $\Delta$  is negative  $j$  will retain its possession.*

All this assumes the parties are rational, then it follows that:

– any *Atk* by *i* will occur if  $v(r)^i > Atk^i$ , i.e. if  $u^i > Atk^i$

– any *Def* will occur if  $Def^j \leq v(r)^j$ , i.e. if  $Def^j \leq u^j$

Since, according to the above [def 10] and [def 11]:

$$Atk^i = f(c^i), \text{ and } Def^j = f(c^j)$$

it is clear that

$$Atk^i \text{ must be } < u^i;$$

and that, as discussed,

$$Def^j \text{ must be } \leq u^j,$$

it follows that:

$$i \text{ will take } r \text{ from } j \text{ if } i = BU$$

where BU [def 4] is the Best Social User of the resource at stake.

i.e.,

$$SP \text{ will change } A, \text{ if } i = BU,$$

*and so by definition*

$$SP: \rightarrow \sigma [\Omega > A]$$

Therefore a political (violent) allocation will produce a state of the world ( $\sigma$ ) with a distribution that is superior to the initial allocation, and consequently  $NSG > 0$ , the Net Social Gain will be positive.

The simple conclusion is that  $i$  will attack only if its expected return will be higher than its actual costs, given that the reversal is true for  $j$ , who will defend its control of the resources up to the limit of its expected utility, so it is clear that the winner is the Best User of  $r$ , and henceforth that in the case of a violent allocation, under the above stated assumptions, the Net Social Gain will be positive, *and that* the resources gravitate to their best possible social uses.

This plainly means that in a violent world, which is also rational, as defined above, where violence is allowed, and there are no properties but just possessions, resources are allocated to their best uses.

Then, given these premises, there is no difference between a violent and a market allocation, i.e., *NSG is indifferent if society selects SP or SM as a Distributive Social Function.*

The result is that, for the purposes of society and efficiency,

$$SP \approx SM$$

i.e., a political allocation is as efficient as a market allocation, and there is no inner superiority in a market allocation in respect to a political allocation, from the standpoint of the efficient uses of resources, and of the Net Social Gain.

The objection that a party can have a cheaper recourse to violence, as to impose an allocation, which depends heavily on this fact, does not alter the result: *as long as violence becomes a cost of one of the factors of production* (i.e., the cost of controlling the resources is internalised within the model), the winner will anyway always be the best social user. This happens because this party minimises the costs of production of its expected utility, so that, all things being equal,  $u^i > u^j$  precisely because  $c(\text{Atk})^i < c(\text{Def})^j$ .

#### 4. CONCLUSIONS.

My conclusion at this point is that given the definitions and the assumptions made in the second section, there is no difference between an *SM* and an *SP*; i.e., there is no difference between a pure economic allocation and a pure political allocation. And especially, there is no theoretical possibility to maintain that there is any inner superiority, in respect of efficiency, between a market and a political allocation.

Moreover, if there is at least the cost of access to force, then the only real problem is the allocation of this cost, i.e. of power, defined as the cost of the actual or possible recourse to violence, and especially as the capacity of an efficient mobilisation and use of force against potential foes.

It seems trivial that if we do not allow violence, all of the resources invested in producing violence will be released for other purposes (Coase, 1988, 673) and the value of production will be increased, but *this is not* theoretically true, because the costs of avoiding violence still exist and it consists precisely in an actual or threatened use of violence against all parties willing to use it. The problem then becomes whether it is better to concentrate force or to allow force dispersed in society to work out

the possible allocations. The matter becomes considering “force” as part of the initial allocation of resources, and so to consider its re-allocation within society.

The mere shift from an anarchical system based on self-help and a “constituted” order based on a Leviathan (benign or evil) does not resolve in itself the problem of the social cost of the production of violence. In other terms the most important real economic problem becomes “political”.

#### WORKS CITED

- Brown, J.G. (1993) Blackmail as Private Justice, *Pennsylvania Law Review*, vol. 141, 1935-1974.
- Calabresi, G. and Melamed, A.D, (1972) Property Rule, Liability Rules and Inalienability: One View of the Cathedral, *Harvard Law Review*, vol. 85, 1089 - 1128.
- Calabresi, G. (1991) The Pointlessness of Pareto: Carrying Coase Further. *Faculty Scholarship Series. Paper 2014*. [http://digitalcommons.law.yale.edu/fss\\_papers/2014](http://digitalcommons.law.yale.edu/fss_papers/2014)
- Coase, R.H., (1988) The 1987 McCorkleLecture: Blackmail, *Virginia Law Review*, vol. 74, 655 - 675
- Koskenniemi, M. (2001) *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960*. Cambridge University Press.
- Schelling, T.C. (1960). *The Strategy of Conflict*. Harvard University Press.
- Waltz, K.N. (1979). *Theory of International Politics*. Waveland Press.