objection
the subordination of law to arbitrary political
power
(law = politics)
to “rectify” the problems of the state of nature (the hypothetical situation of absolute freedom), acknowledges the need to establish “private protection associations” to institutionalize the “dominant protective association” ultra-minimal State (which protects only those who pay) and the “minimal state” (or “night watchman”) with the function of guaranteeing the execution of contracts
social egalitarian theory

the emphasis on social needs rather than individual freedom

protecting freedom in the context of recognition of equality between individuals

the exchanges between individuals are not only bilateral, but mediated by society (affirming the priority of public over private)

maximum State/minimal market
“original position”/“veil of ignorance”: agreement on justice:
a) the principle of equality (the protection of freedom is limited by the recognition of equal freedom for all)
b) the principle of difference (or compensation for substantial economic and social inequalities through the “maximin” rule, by which distribution is just if it produces benefits to compensate the least advantaged, therefore even the sick)

society must “take charge” of inequality, there is a social duty of solidarity, cooperation and altruism
objections

a) non recognition of inalienable individual rights claimed against the social whole

b) expansion of the powers of the welfare State (with inevitable heavy fiscal intervention and excessive bureaucracy, in addition to the risk of inefficiency of services)
legal positivism

- subordination of law to politics
- positive law is the instrument and product of political will

power is absolute: no juridical limits binding it
power can (should it want to) assert its own will (do what it wants and when it wants) as a mere factual exercise and imposition of force
despotic and tyrannical dominion

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natural law theory

power demands a justification: the foundation of the legitimacy of power: the common good

an arbitrary power would be a ‘corruption’ of politics’ and disobedience to power is legitimate and dutiful

this is the theory that leads to the theory of ‘rule of law’, in the context of constitutionalism or neo-constitutionalism
PLURALISM/TOLERANCE

• cultural pluralism is more visible: cultural anthropology, the migratory movement
• the coexistence of different ethnic groups in the same territory
• globalization: solutions to problems within a culture often have implications outside
intercultural theory

• equality must ensure that all men, regardless of cultural belonging, have the possibility of knowing each other as human beings (before realisation of their belonging to a specific cultural group)

• affirming equality means assuming the differences: equality is the precondition for “recognition” of the “differences” as significant interaction between human beings
care

d) it is a process, a task, an active commitment, a constant tension; a virtue therefore that one acquires in the habit of behaviour, sustained and accompanied by a strong personal motivation
care/justice

• care is not identified with justice, care does not substitute justice but care integrates the sense of justice
• care allows the recognition of others not only rationally as socius but also empathically as fellow creature, with interpersonal, sentimental and experiential relationality