

1) The Three Great Errors of Most Libertarians: a Concise Philosophical Analysis¹

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(As the text indicates in various places, a version of this essay is now a chapter in a book: Lester, J. C. 2014. *Explaining Libertarianism: Some Philosophical Arguments*. Buckingham: The University of Buckingham Press.)

Abstract

Libertarians are mistaken to seek foundations, to take sides over moral approaches, and to have no proper theory of liberty.

The error of seeking a foundation or justification

Assumptions are unsupported propositions. All observations and arguments require assumptions, and thereby remain ultimately unsupported. Similarly, all theories – whether empirical, or a priori, or moral, or whatever else – require assumptions, and thereby also remain unsupported. Any attempt to support a theory beyond assumption would require an infinite regress (defending any assumption involves making more unsupported assumptions) or infinite evidence (which involves more unsupported theories, in any case). It's not merely that there's always a risk of error: no epistemological support is possible (even probability theories rest on assumptions). And because we face a universe of infinite unknown facts and infinite unknown theories with our finite and fallible minds, we cannot know what potential refutations of our theories we might have overlooked. Therefore, it's an error to think that a theory can be given a genuine foundation or justification that takes it beyond assumption or conjecture.

However, while a theory logically cannot be supported by any amount of evidence or argument, it logically can be refuted by a single sound counter-example or counter-argument (although assumptions cannot be avoided there either, and so we must criticize any offered refutations). Consequently, a theory is better thought of as a floating boat that might be sunk at any time by some, as yet unknown, counter-example or counter-argument. And so we should conjecture boldly to attempt to capture more truth and then test severely to attempt to eliminate error. It needs to be understood that much evidence and argument that is often mistaken for 'justifying' or 'supporting' a theory (which is not possible) is really explaining, or applying, or defending, or testing the theory (which are entirely possible, but which usually involve various new conjectures). All this is an explanatory outline of the extreme fallibilist epistemology of critical rationalism as theorized initially and principally by Karl Popper.

Libertarianism is, therefore, best propounded as a bold conjecture in some form: for instance, "People should have liberty in normal circumstances (rather than in every imaginable case)." If we are asked what this theory is based on, then we should explain that it is ultimately and necessarily a conjecture – like all theories – albeit one that appears to withstand criticism as far as we can tell. We should then invite criticisms of the libertarian conjecture and answer people's specific criticisms as best we can. This saves wasting time on elaborating impossible 'foundations' and stands the best chance of convincing a critic that libertarianism is not refuted and so might be correct. However, we

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should also try to criticize libertarianism ourselves, for we want to eliminate errors where we can. And even if libertarianism is approximately correct, it is not complete and without theoretical problems.

The error of taking sides between deontology and consequentialism, etc.

The first thing to notice here is that one can advocate libertarianism for a variety of more basic reasons without implying that any of these is supposed to be the foundation of libertarianism. For it is also a conjecture that libertarianism is required for protecting genuine rights and duties (deontology), or has the greatest positive welfare, or utility, or whatever, consequences (consequentialism), or allows the society most conducive to people's desirable flourishing (eudaemonism), or is the implicit social contract that promotes the good of all (contractarianism), or greatly enhances each individual's self-control, self-realization, and critical faculties (autonomy), or even that its long-term effect is to maximize the welfare of the worst-off group and other 'fair' outcomes (social justice). And the list might be indefinitely extended.

I usually prefer simply to say that I advocate libertarianism: liberty for all. I don't mind saying that we have a strong prima facie right to have liberty and a duty to respect liberty. But that's not intended to suggest that libertarianism is logically supported by, or even requires, deontology. However, the real issue here is the common view that there are serious clashes in these approaches and in particular between deontology and consequentialism. As far as I can tell, there aren't systematic clashes in everyday practice between respecting libertarian rights and promoting human welfare. And so if one is advocating libertarianism as a practical ideology, then it's irrelevant that we can imagine far-fetched or very rare cases where libertarian rights and human welfare clash. Therefore, it's unnecessary to take sides between rights and welfare.

That said, there is often a modern mistake about the nature of rights and consequences that earlier theorists tended not to make. Rights cannot plausibly be conceived of and held irrespective of the practical consequences of applying them. It's absurd to suppose that there could be a genuine right or duty that had disastrous consequences for human beings. Rights and duties tend to evolve just because of their apparent usefulness to humans. Similarly, it's absurd to suppose a valid form of consequentialism that in practice flouts rights and duties. In fact, libertarianism can be interpreted as a form of rule consequentialism: it provides the rule (respect liberty) that promotes the best consequences. Far from being incompatible, deontology and consequentialism are more like two sides of the same coin. (And analogous arguments apply to the, obviously related, alleged distinction between rationalism and empiricism.)

Moreover, if theoretically pushed, deontology and consequentialism appear to have at least some tendency to morph into each other. For if we ought to promote good consequences (however conceived), then presumably we must have some sort of duty to promote, and right to have, those good consequences. And if we ought to promote rights and duties (however conceived), then presumably we ought somehow to promote the consequence of more of those rights and duties being respected.

I don't see that there are significant realistic clashes between any of the listed possible reasons for advocating libertarianism. However, I think it's clearer to view them as various conjectural explanations of how libertarianism works or can be understood – especially in the face of incompatible criticisms – rather than as what libertarianism is 'founded' or 'based' on. In any case, libertarianism doesn't need additional principles to make it acceptable. I don't mean to imply by this that liberty is always an end in itself or the ultimate thing that ought to be valued. I'm a value pluralist: I don't think it's possible to reduce everything to a single desideratum. It's simply that there's no sound practical criticism of systematically allowing people to have liberty (or, at least, no

alternative that withstands criticism better). It's enough that libertarianism is an unrefuted practical and moral conjecture.

The error of having no explicit, necessary, and sufficient theory of liberty

The biggest error of most libertarians is an absurdity hiding in plain sight: they don't have an explicit theory of libertarian interpersonal liberty. They usually have some implicit grasp of liberty that works tolerably well once property is assumed. But they cannot coherently, consistently, and cogently explain exactly how liberty, as such, relates to anything. At the fundamental level, they tend to talk about self-ownership, 'homesteading' (initial acquisition), property transfer, etc., and the 'non-aggression principle' – but all with respect to 'rights'. This not only fails to explain the role of liberty itself, it also confuses matters by conflating morals with the issue. What liberty is, and how it applies, is one question. Whether such liberty is moral is a separate question. (There is the explicit and non-moral zero-sum theory of liberty that a minority of self-identified libertarians advocate: whereby, for instance, I gain the liberty that you lose by forcing you to be my slave. But this is not a libertarian theory at all because it fails to distinguish liberty from license or power. And the, occasionally cited, 'liberty of action' is not in itself even a form of interpersonal liberty.)

However, the basic idea of libertarian liberty is not hard to explain. The 'non-aggression principle' itself is close to being a necessary and sufficient way of capturing it, if correctly and charitably interpreted (for 'aggression' can be misleading and the 'non' can appear to be absolutist). The Rothbardians – and some of their critics – are mistaken in thinking that a theory of legitimate property is presupposed, or implied, by the non-aggression principle. For the principle can do it all, by being understood ultimately in a pre-propertarian sense. First assume that libertarian liberty means not being aggressed against (or proactively constrained, or interfered with) by other people. Now assume that such aggressions need to be minimized in the event of any clashes. Then it clearly follows that secure self-ownership and the ownership-by-use of unowned resources are libertarian. For if people were not secure self-owners or could not have such ownership-by-use, then they could be objectively aggressed against by other people to a high degree: efficient economizing, and even personal safety, would not exist. One way of understanding this is that libertarian liberty tends to 'internalize externalities' (as economists call this, but here meant in a pre-propertarian sense). And that also helps to explain why liberty is so productive: efficient economizing is possible and the 'tragedy of the commons' is avoided.

Thus we can understand how self-ownership and all non-aggressively-acquired property are entailed by liberty itself. And in the event of any further issues or clashes arising, we can look at what 'minimizes aggression' to work out what is most libertarian. For greater clarity and precision, I tend to theorize 'liberty' as 'the absence of proactively imposed costs' and 'libertarian practice' as 'the minimizing of any proactively imposed costs'. The details can become confusing unless one has first grasped the basic idea. But the basic idea of libertarian liberty is clear and uncomplicated.

A brief restatement

Philosophy can sometimes be hard to follow. Just as with other intellectual subjects, it cannot be made so simple that anyone can grasp it without some intellectual effort. But to attempt as much clarity and ease of comprehension as possible, let me briefly restate the main points in slightly different ways than in the above account.

- 1) Assumptions are unavoidable and ineliminable. Logically, theories cannot be supported or justified beyond their assumptions by evidence or arguments. But they might be refuted by a single sound counter-example or counter-argument. So instead of seeking impossible support we should advocate and explain libertarianism as a bold practical conjecture that we challenge others to criticize. This makes a virtue of an epistemological necessity.
- 2) We may conjecture that rights and duties that respect liberty are systematically conducive to good consequences in normal life. Therefore, it's an error to think that the practical libertarian must either defend rights to liberty in disastrous but unlikely circumstances (absolute deontology) or ignore libertarian rights and look only at the consequences (act consequentialism). In practice, deontology and consequentialism evolve together. And, logically, each implies a version of the other: maximum rights observance is the best consequence; consequentialism implies rights to those good consequences.
- 3) Libertarian interpersonal 'liberty' is simply 'the absence of "aggressions" (proactive impositions) by other people'. And 'libertarian practice' is 'the minimization of any clashes of liberty' (e.g., both allowing and banning all pollution proactively imposes: therefore some compromise to minimize the clash is entailed). By applying liberty alone we can deduce self-ownership, initial acquisition, transfer, etc. There is no need for confusion (the basic idea of liberty is clear and uncomplicated) or for additional principles (it is necessary and sufficient for libertarianism).