

## Eleutherological-Conjecturalist Libertarianism: a Concise Philosophical Explanation

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### *The general philosophical problem*

The central libertarian insight is that private property both protects people and their projects and promotes productivity for all. However, orthodox private-property libertarianism is severely philosophically confused. It conflates theories of rights, property, consequences, and so-called ‘supporting justifications’. And this is all done without an explicit abstract theory of interpersonal liberty: an eleutherology. This is as absurd as if utilitarianism were to have no explicit theory of utility.

Therefore, this essay first gives a very brief explanation of a libertarian theory of abstract (non-propertyarian and non-normative) liberty and what it generally and normally entails if applied. This is philosophically deeper than theories of liberty and libertarianism that start with propertyarian<sup>1</sup> or normative<sup>2</sup> assumptions, or which merely list things libertarianism is supposed to be about<sup>3</sup> (however accurate, as far as they go, these approaches may sometimes be). There is then a brief explanation of critical-rationalist epistemology and how it applies. These two, logically separable, parts comprise eleutherological-conjecturalist libertarianism: the full solution to the general philosophical problem.

### *Abstract liberty and its stages of practical application*

#### 0) The specific philosophical problem

Libertarianism—and classical liberalism generally—presupposes (or entails) a specific, but implicit, conception of liberty. Imagine two lists of property-rights: one list is all those that are libertarian; the other list is all those that are not. What determines into which list a property-right is assigned? If libertarianism is really about liberty, then the determining factor must be whether the property-right fits what liberty is in some more abstract sense. It greatly clarifies matters to have an explicit theory of this presupposed conception of abstract liberty and how it relates to its practical application. This can usefully be distinguished into five separate stages.

#### 1) The abstract theory of interpersonal liberty

‘Liberty’ in its most general sense means ‘absence of constraint’ (a relevant contrast is ‘presence of assistance’). The issue here is interpersonal liberty: the absence of constraint on people by each other (not any natural constraint, whether *intrapersonal* or external). But what is to be unconstrained? At its most abstract, this must be the satisfaction (i.e., fulfilment, not a psychological sensation) of our wants or preferences. However, merely failing to assist someone’s want-satisfaction (not providing a benefit or gain) is not proactively to constrain

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<sup>1</sup> See, for instance, the many publications by Walter Block.

<sup>2</sup> As is famously the case in Nozick, R. 1974. *Anarchy, State, and Utopia*. Oxford: Basil Blackwell: “Individuals have rights, and there are things no person or group may do to them (without violating their rights)” (p. ix).

<sup>3</sup> E.g., Zwolinski, M. (undated) “Libertarianism”, *Internet Encyclopedia of Philosophy*: “libertarians are generally united by a rough agreement on a cluster of normative principles, empirical generalizations, and policy recommendations” (a list of eight examples then follows).

that want-satisfaction (proactively imposing a cost or loss). Therefore, abstract liberty is ‘the absence of interpersonal proactively-imposed constraints on want-satisfaction’. But for brevity, ‘no proactively imposed costs’ or simply ‘no (proactive) impositions’. This also solves the problem of what, in abstract principle, constitutes ‘inflicted harm’ from a libertarian viewpoint. This eleutherology is the theory of the abstract—not proprietarian or normative—perfect, or complete, interpersonal liberty-in-itself that libertarianism presupposes. This is a descriptive and falsifiable theory (by counterexample or sound criticism). It is not a definition; whether persuasive, stipulative, or about usage (as the non-philosophical may mistakenly view it). However, any theory can also be used as a definition.

## 2) The individualistic liberty-maximisation theory

There are three general theoretical problems with applying this account of perfect liberty: clashes, defences, and rectifications. 1) What if our want-satisfactions clash? I want to do something that, coincidentally, proactively imposes on you (say, by causing obnoxious and hard-to-avoid smoke), but to stop me would also proactively impose on me (I want a fire for warmth and cooking). The most libertarian option is to minimise overall proactive impositions, with situation-specific compromise or compensation. 2) How far can one go to defend oneself from proactive impositions? Not so far as to proactively impose by overall exceeding anything that is threatened (e.g., putting landmines in one’s garden to stop children using it as a shortcut). 3) If a proactive imposition occurs, then what would rectify it? Restitution matching the degree of imposition, including any risk-multiplier<sup>4</sup> proportional to the statistical chance of the imposer’s evading rectification. Therefore, we see that some very broad interpersonal comparisons of normal cost-impositions are necessary to solve these problems. But these three solutions are only about the liberty of the people directly involved. They do not amount to collective libertarian consequentialism (with the knowledge problem causing self-defeating unintended consequences). This is an individualistic liberty-maximisation theory.

## 3) The immediate practical implications of instantiating liberty

If such abstract liberty were now to be applied or observed in a state of nature, then what general things would this entail? Primarily, people want to have ultimate control of the bodies that they more or less are. They do not proactively impose on other people by having this, unless trivially and reciprocally by merely existing and being composed of resources now unavailable. Therefore, liberty-maximisation entails that they have this ultimate control of their bodies. Next, people want to have ultimate control of any unused resources they start using, and thereby closely involve in their want-satisfactions. They do not proactively impose on other people by having this, unless trivially and reciprocally by their chosen use and those resources now being unavailable. Therefore, liberty-maximisation entails that they have this ultimate control of used resources. Otherwise, and consequently, all interpersonal interactions and resource-transfers need to be consensual or they are likely to significantly proactively impose. These three principal, positive, *prima facie*, libertarian rules of liberty-in-practice fit abstract liberty-in-itself almost perfectly. They maximally internalise externalities with respect to want-satisfaction, and are thereby economically efficient (in the sense of maximising general want-satisfaction). To break any of these three positive rules infringes interpersonal liberty *prima facie*. However, philosophically problematic cases may require the application of the abstract theory or the maximisation theory.

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<sup>4</sup> See Lester, J. C. [“Libertarian Rectification: Restitution, Retribution, and the Risk-Multiplier”](#) *Journal of Value Inquiry* 34 (2/3): 287-297 (2000).

#### 4) Private property and legal remedies are additional aspects

In a hypothetical world of perfect libertarians, those three practical rules and three solutions to clashes might be enough for libertarianism to exist. But in order to better protect and promote liberty-in-practice in the real world, the above positive rules and solutions can be instituted as enforceable private property<sup>5</sup> and legal remedies. As a result, strictly speaking, self-ownership, such private property, and such legal remedies are contingent, practical, libertarian legal principles. They are not what liberty or even libertarianism is inherently (as propertarian-libertarianism assumes<sup>6</sup>). Otherwise, we risk conflating liberty and property into an unfalsifiable persuasive theory (or even a mere stipulative definition). However, once libertarian legal rights have been derived, then proactive impositions can normally be interpreted in terms of breaching them: there is no need to return to the abstract theory and pre-legal implications except for philosophically problematic cases. This is why private-property libertarianism alone has so much intuitive verisimilitude; and is, therefore, sometimes mistaken for the necessary and sufficient totality of libertarianism.

#### 5) Moral defences are a completely separate issue

It is a further completely separate and normative matter whether this overall positive system of liberty-in-itself and liberty-in-practice is moral, just, rights-observing, etc. Only after the positive theories of abstract liberty and its practical implications have been determined is it possible to ask normative questions about them both. As a result, strictly speaking, self-ownership, such private property, and such legal remedies are not inherently moral, just, rights-observing, etc. (as theories of libertarianism sometimes appear to assume<sup>7</sup>). Otherwise, we risk conflating liberty and morality into an unfalsifiable persuasive theory (or even a mere stipulative definition). Correctly interpreted, philosophical and empirically, consequentialism, contractarianism, and deontology (the three main moral theories) all point towards libertarian liberty-in-practice as the outcome (the real top of Derek Parfit's moral mountain<sup>8</sup>). However, libertarianism can simply be morally posited and defended in itself without requiring that it follow from a more-fundamental moral system.

#### *Critical-rationalist epistemology and its application*

As critical rationalism explains, there are no 'supporting justifications'.<sup>9</sup> Empirical theories have infinite implications, which finite and theory-laden evidence logically cannot support but can test: a counterexample, if true, logically refutes a theory (but all within the realm of

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<sup>5</sup> One added sophistication is similarly derivable intellectual property. See Lester, J. C. [“Against Against Intellectual Property: a Short Refutation of Meme Communism”](#) and [“Intellectual Property, the Non-Aggression Principle, and Pre-Propertarian Liberty: New-Paradigm Libertarian Replies to some Rothbardian Criticisms”](#) (both in *Arguments for Liberty: A Libertarian Miscellany*. Buckingham, England: The University of Buckingham Press).

<sup>6</sup> The publications by Walter Block say they are about libertarianism and liberty but property rights appear to be placed first and last, and libertarianism is held to be a theory of law.

<sup>7</sup> As we see in *Anarchy, State, and Utopia* (op. cit.).

<sup>8</sup> *On What Matters: Volume One* (Oxford University Press, Oxford, 2011), p. 419: “These people are climbing the same mountain on different sides.”

<sup>9</sup> For detailed explanations of critical rationalism see, for instance, Popper, K. R. *Conjectures and Refutations* (London: Routledge & Kegan Paul [1963] 1978) and Miller, D. W. *Critical Rationalism: A Restatement and Defence* (Chicago and La Salle, Ill.: Open Court, 1994).

provisional conjecture). So-called ‘supporting arguments’ face a trilemma: infinite regresses, or circularities, or dogmatic (‘axiomatic’) starting assumptions (arguments are really conjectural explanations). Hence libertarianism, like all theories, is unjustifiable—in the sense of unsupported. However, it can still be conjecturally explained and defended (and criticised and tested)—philosophically and social scientifically—in terms of theory, practice, and morals (three quite different things). And if it survives scrutiny, then it can be a critically-preferred conjecture; rather than, at the other extreme, an uninformed, inchoate, and untested conjecture.

Therefore, libertarianism can only be provisionally squared (or ‘justified’: a non-foundationalist homonym) with all currently known tests and criticisms. We might even say that a ‘supporting justification’ is logically impossible but a ‘squaring justification’ is provisionally possible. As even philosophers often conflate the two—and, therefore, think both senses are being rejected—that is one reason they might find critical rationalism baffling or even ridiculous. But if a heliocentrist need not eschew the use of ‘sunrise’ and ‘sunset’, then, *a fortiori*, a critical rationalist could in principle use (‘squaring’) justification’. However, unlike with heliocentrism, there is still a real risk of confusion or equivocation. And so promiscuous use of even the squaring sense is probably best avoided.

Consequently, the abstract theory, the stages of application, and their connections involve conjectural explanations that remain always open to potential criticism and testing. In principle, of course, one could adopt the abstract theory of liberty and its implications but reject critical-rationalist epistemology. That is why it is possible to explain the abstract and practical theory without mentioning epistemology. And this is partly done because there is a risk of conflating the two, or not clearly seeing the theory of liberty and its implications because of confusion about the epistemology and its role. But if one does separate them, then one would still be left with the logically impossible task of attempting to provide ‘supporting justifications’.

### *Conclusion*

This is a complete philosophical theory of libertarianism, in outline at least. That is, its application offers solutions to all of the philosophical problems of libertarianism that have been discussed in the literature *ad nauseam*. However, its relatively heterodox and somewhat complex approach appears to be a barrier to understanding it or to taking it seriously (as many responses to it have illustrated). Perhaps this short essay can help to dispel some of the misunderstanding and dismissiveness. As a concise explanation, it is ineluctably philosophically terse. It thereby risks being opaque in at least some places, or risks suggesting questions or criticisms that it does not answer. Fortunately, there is a more-detailed philosophical explanation of this liberty-centred and critical-rationalist<sup>10</sup> theory.<sup>11</sup> There is also an earlier book that goes into far more detail.<sup>12</sup> It also raises many peripheral and additional issues. But it often expresses the central arguments with less clarity than has subsequently been possible (in the light of improving criticism). Therefore, both this essay and the longer one could be useful prolegomena to attempting that book.

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<sup>10</sup> See Lester, J. C. [“Arguing with ‘Libertarianism without Argument’: Critical Rationalism and how it applies to Libertarianism.”](https://philpapers.org/rec/LESAWQ) (https://philpapers.org/rec/LESAWQ).

<sup>11</sup> See Lester, J. C. [“The Heterodox ‘Fourth Paradigm’ of Libertarianism: an Abstract Eleutherology plus Critical Rationalism.”](#) *Journal of Libertarian Studies* 23:91-116 (2019).

<sup>12</sup> Lester, J. C. *Escape from Leviathan: Libertarianism Without Justificationism* (Buckingham: The University of Buckingham Press, [2000] 2012).