

# Eleutherological-Conjecturalist Libertarianism: a Concise Philosophical Explanation

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## Abstract

*The general philosophical problem with most versions of libertarianism and how this essay will proceed. The specific problem with liberty explained by a thought-experiment. The abstract (non-propertarian and non-normative) theory of interpersonal liberty-in-itself as ‘the absence of interpersonal proactively-imposed constraints on want-satisfaction’, for short ‘no (proactive) impositions’. The liberty-maximisation theory solves the problems of theoretical clashes, defences, and rectifications without entailing libertarian consequentialism. The practical implications of instantiating liberty: three rules of liberty-in-practice 1) ultimate control of one’s body, 2) ultimate control of one’s used resources, 3) consensual interpersonal interactions and resources transfers. These rules are economically efficient. Private property and legal remedies are additional institutional aspects, but to which ‘proactive impositions’ then apply prima facie. Libertarian law is often mistaken for libertarianism. Moral explanations are a separate issue. The three main moral theories imply libertarianism, but it can be morally posited independently of them. Critical rationalism and its application. No empirical or argumentative support for theories. An ambiguity with ‘justification’. How the epistemology applies to the libertarian theory but remains separate in principle. Conclusion: there are further published explanations but this should be enough to generate useful criticism.*

## Key words

*libertarianism, liberty, critical rationalism, property, legal remedies, morality*

## 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 theory of liberty: an eleutherology (from ‘eleutheria’, an Ancient Greek term for, and personification of, liberty). 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-propertarian and non-normative) liberty and what it generally and normally entails if applied. This is philosophically deeper than theories of libertarianism that start with propertarian<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 independent, parts comprise eleutherological-conjecturalist libertarianism: the full solution to the general philosophical problem.

## Abstract liberty, its stages of practical application, and morality

### *0. The specific philosophical problem with liberty*

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

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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. *Anarchy, State, and Utopia* (Oxford: Basil Blackwell, 1974): “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. “Libertarianism”, *Internet Encyclopedia of Philosophy* (undated): “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).

other list is all those that are not. What determines into which list a property-right is to be assigned? If libertarianism is really about liberty, then the determining factor must be whether the property-right somehow fits what liberty is in a more abstract sense than property. It greatly clarifies matters to have an explicit theory of this presupposed conception of abstract liberty and how it relates to its practical application and to morality.

### *1. The abstract theory of interpersonal liberty*

‘Liberty’ in its general sense means ‘absence of constraint’ (a relevant contrast to ‘constraint’ is ‘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, most generally, do we want other people to not constrain? This appears to be the satisfaction (i.e., fulfilment, not a psychological sensation) of our wants or preferences. However, simply failing to assist someone’s want-satisfaction (not providing a benefit or gain) is not equivalent to proactively constraining that want-satisfaction (proactively imposing a cost or loss). Therefore, this abstract liberty can be theorised as ‘the absence of interpersonal proactively-imposed constraints on want-satisfaction’. But for brevity we may use ‘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 (e.g., showing that it is somehow incoherent, or that it cannot explain some aspects of libertarianism, or that another theory of liberty fits libertarianism better). It is not a definition; whether stipulative, persuasive, or about usage (as the non-philosophical, in particular, 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 which, 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 (thus we see the error in assuming that libertarianism is absolutist: that individual liberty can be perfect and without any infractions). 2) How far can one go to defend oneself from proactive impositions? Not so far as to proactively impose by overall exceeding any imposition 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,<sup>4</sup> including retributive-restitution and any risk-multiplier proportional to the chance of evading rectification.<sup>5</sup> Therefore, we see that some 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 affected, although that could be many. They do not amount to collective libertarian consequentialism (with the knowledge problem and moral hazards causing self-defeating unintended consequences). This is an individualistic liberty-maximisation theory.

### *3. The immediate practical implications of instantiating liberty*

If such liberty were to be 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 to other people. 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 (the

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<sup>4</sup> Within reasonable limits to deal with the overly passionate and stop the, self-defeating, evolution of utility monsters; see Lester, J. C. *Escape from Leviathan: Libertarianism Without Justificationism* (Buckingham: The University of Buckingham Press, [2000] 2012), p. 69.

<sup>5</sup> See Lester, J. C. [“Libertarian Rectification: Restitution, Retribution, and the Risk-Multiplier.”](#) *Journal of Value Inquiry* 34 (2/3): 287-297 (2000).

resources they use for clothing, tools, habitation, etc.). 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 to other people. Therefore, liberty-maximisation entails that they have this ultimate control of their 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, problematic cases may require applying the abstract theory or the maximisation theory.

#### 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 function. But in order to better protect and promote liberty-in-practice in the real world, these positive rules and solutions can be instituted as enforceable private property<sup>6</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-in-itself or even liberty-in-practice are inherently (as propertarian-libertarianism assumes<sup>7</sup>). Otherwise, we risk conflating liberty and property into an unfalsifiable theory (or even a mere stipulative definition). Nevertheless, once libertarian legal principles have been thus 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 some philosophically problematic cases. This is why private-property libertarianism alone has so much intuitive verisimilitude and cogency; and it is, therefore, sometimes mistaken for the necessary and sufficient totality of libertarianism.

#### 5. Moral explanations are a separate issue

It is a further completely separate and normative matter whether this overall positive system of liberty-in-practice is moral, just, rights-observing, etc. Only after it has been determined is it possible to ask normative questions about it. 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>8</sup>). Otherwise, we risk conflating libertarian property and morality into an unfalsifiable theory (or even a mere stipulative definition). Correctly interpreted (philosophically and empirically), deontology, consequentialism, and contractarianism—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>9</sup> However, libertarianism can simply be morally posited and defended in itself without requiring that it follow from any allegedly more-fundamental moral theory.

### Critical-rationalist epistemology and its application

As critical rationalism explains, there are no ‘supporting justifications’.<sup>10</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 provisional conjecture).

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<sup>6</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, [2011] 2016).

<sup>7</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>8</sup> As we see in *Anarchy, State, and Utopia* (op. cit.).

<sup>9</sup> *On What Matters: Volume One* (Oxford University Press, Oxford, 2011), p. 419: “These people are climbing the same mountain on different sides.”

<sup>10</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).

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), both philosophically and social scientifically. And this needs to be in terms of theory, practice, and morals: three quite different things. Then, if it survives scrutiny, it can be a critically-preferred conjecture; rather than, at the other extreme, an uninformed, inchoate, and untested conjecture.<sup>11</sup>

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 absurd. 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 of liberty, 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 and its implications but reject critical-rationalist epistemology. That is why it is possible to explain the abstract and practical theory without mentioning epistemology.<sup>12</sup> And this was partly done here 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’.<sup>13</sup>

## 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*. But its relatively heterodox and somewhat complex approach appears to be a barrier to understanding it or to taking it seriously. Perhaps this short essay can help to dispel some of the misunderstandings and dismissiveness. As a concise explanation, it is ineluctably philosophically terse. It thereby risks being opaque in at least some places, or suggesting obvious questions or criticisms that it does not answer. Fortunately, there is a more-detailed philosophical essay on this liberty-centred and critical-rationalist theory.<sup>14</sup> There is also an earlier book that goes into far more detail.<sup>15</sup> That book raises many additional and peripheral issues, but it often expresses the arguments with less clarity than has subsequently been possible (in light of receiving and responding to further criticism). Consequently, there are two further books—so far—with elaborations and defences.<sup>16</sup> However, there should be more than enough of an explanation here to stimulate criticisms. And some of those criticisms, whether by chance or skill, may reveal new unsolved problems, or even be partial or complete refutations.

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<sup>11</sup> The idea that a theory can, at least, be ‘corroborated’ seems to be a justificationist error: for ‘corroborate’ means ‘support’ (etymologically, ‘strengthen’). But if a theory survives our best tests and criticisms, then it is logically coherent to ‘critically prefer’ it and conjecture that it might be true (i.e., it accurately describes or depicts).

<sup>12</sup> However, critical rationalism fits libertarianism in a variety of ways; although Karl Popper himself drew different conclusions: see Lester, J. C. [“Popper's epistemology versus Popper's politics: A libertarian viewpoint.”](#) *Journal of Social and Evolutionary Systems*, 18 (1): 87-93 (1995).

<sup>13</sup> See Lester, J. C. 2017. [“Arguing with ‘Libertarianism without Argument’: Critical Rationalism and how it applies to Libertarianism.”](#) (<https://philpapers.org/rec/LESAWQ>).

<sup>14</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>15</sup> Lester [2000] 2012.

<sup>16</sup> See relevant chapters in Lester, J. C. *Explaining Libertarianism: Some Philosophical Arguments* (Buckingham: The University of Buckingham Press, 2014) and, to a lesser extent, Lester [2011] 2016.