The Heterodox 'Fourth Paradigm' of Libertarianism:
an Abstract Eleutherology plus Critical Rationalism

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Abstract

1) Introduction. 2) The key libertarian insight into property and orthodox libertarianism's philosophical confusion. 3) Clearer distinctions for applying to what follows: abstract liberty; practical liberty; moral defences; and critical rationalism. 4) The two dominant ('Lockean' and 'Hobbesian') conceptions of interpersonal liberty. 5) A general account of libertarianism as a subset of classical liberalism and defended from a narrower view. 6) Two abstract (non-propertarian, non-normative) theories of interpersonal liberty developed and defended: 'the absence of interpersonal proactively-imposed constraints on want-satisfaction', abbreviated to 'no proactively imposed costs'; and 'no imposed costs'. 7) Practical implications for both main abstract conceptions of liberty derived and compared. 8) How this positive analysis relates to morals. 9) Concluding conjectures: the main abstract theory of liberty captures the relevant interpersonal conception; the new paradigm of libertarianism solves the old one's problems.

"It's an amazing fact that the nature of liberty is one of the least-discussed topics in what libertarians like to call 'the literature of liberty'." Irfan Khawaja[1]

1) Introduction

The issue here is 'liberty' (from a Latin root), or 'freedom' (from an Anglo-Saxon root). But it is not 'liberty' in its most general sense: for that also applies outside the social realm, including to such matters as arise in physics and engineering (as any internet search shows; and it can be hard to preclude such references when one is not interested in them). The issue here is only social or interpersonal liberty: the liberty that people have in relation to each other. This essay will sometimes refer to 'interpersonal liberty' and sometimes simply to 'liberty', but the former is always what is meant.

There is a philosophical approach to libertarianism that is very different from the mainstream, or orthodox, varieties.[2] It has two principal differences: an abstract theory of interpersonal liberty (i.e., non-propertarian and non-normative); and critical-rationalist epistemology[3] (i.e., no attempt to provide '*supporting*[4] justifications[5]' or 'foundations').[6] This heterodox philosophical paradigm

1. "Review Essay," *Reason Papers* 31 (2009): 155.
2. Three main types are distinguished in E. Mack, "An Epitome of Libertarianism," *The Journal of Private Enterprise*, 33: 4 (2018): 1–20: "the natural rights approach, the cooperation-to-mutual-advantage approach, and the indirect utilitarian approach" (1).
3. For detailed explanations of critical rationalism see, for instance, K. R. Popper, *Conjectures and Refutations* (London: Routledge & Kegan Paul [1963] 1978) and D. W. Miller, *Critical Rationalism: A Restatement and Defence* (Chicago and La Salle, Ill.: Open Court, 1994).
4. 'Supporting justifications' entail circularities, infinite regresses, or dogmatic assumptions. As critical rationalism explains, all observations, arguments, explanations, and even logical inferences rest on, and thus logically amount to, assumptions. They thereby cannot offer support that transcends their assumptions (but those assumptions are either true or false, depending on the external facts). However, they can be criticised and tested—all within a framework of assumptions, of course (and presumably reality will tend to aid true assumptions to withstand criticisms and tests better than false ones, and true ones should resurface even if mistakenly rejected).

remains largely unknown and otherwise largely misunderstood. In general attempts to explain different types of libertarianism it is typically completely absent.[7] If for no other reason, therefore, it would seem worthwhile to attempt to explain and defend it in outline; and that is one purpose of this essay. However, this is also an attempt to do this with more clarity, precision, and context than hitherto; and this has prompted some new arguments, explanations, and conjectures.[8] The result is still very far from being a pellucidly clear[9] and completely settled account. It would undoubtedly benefit from greater critical scrutiny if only in order to clarify it further, and it might even be significantly corrected or utterly refuted. But regardless of how right or wrong this theory is, it poses questions and problems that the orthodox varieties don't and which need to be answered and solved.

2) The key libertarian insight and its confused orthodox interpretations

Whatever the various libertarian theories are stated to be, there appears to be one key insight that is behind them all. This is the realisation—if only at an intuitive level—that property rights tend to protect and promote two very important things at once: some sense of interpersonal liberty as people not interfering with, or initiating constraints on, each other's lives (sometimes generally expressed as 'live and let live'); and maximal productivity, or economic efficiency, that benefits one and all (sometimes generally expressed as 'a rising tide lifts all boats'). However, as we shall see, this insight remains philosophically confused in the various orthodox forms of libertarianism: there is no clear analysis and clarification of the distinguishable parts. Instead, there is a conflation of certain kinds of deontological rights, good consequences, property rights, and 'supporting justifications'; and all the while being oblivious to the, absurd and ironic, fact that there is no explicit theory of interpersonal liberty to explain any of this.[10] At the same time, these orthodox positions are often perceived and presented by advocatory texts as being crystal clear and completely cogent.[11] Critical texts cite real philosophical problems[12,13,14] but they are usually answered with, unwittingly, ad hoc manoeuvres.[15]

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5. This is emphatically not to object to 'justification' used in the completely different sense that means *explaining* a conjecture and *squaring* (justifying) it with any known criticisms or ostensible counterexamples by adequately responding to them (which cannot, of course, offer any support to the conjecture: it merely appears to remain unrefuted so far).
6. It would be possible to accept the abstract theory of liberty but reject or ignore critical rationalism. But all the logical problems of attempting to support theories are unavoidable.
7. It is absent in, for instance, E. Mack, "An Epitome of Libertarianism"; B. v. d. Vossen, "Libertarianism" (*Stanford Encyclopedia of Philosophy*, plato.stanford.edu, 2019); M. Zwolinski, "Libertarianism" (*Internet Encyclopedia of Philosophy*, iep.utm.edu, undated: accessed 7 December 2018); D. Boaz, "Libertarianism", (*Encyclopædia Britannica*, britannica.com, undated: accessed 7 December 2018). This is a factual observation, not a complaint.
8. This is partly intended to be a better version of the attempts that were J. C. Lester, "Liberty as the Absence of Imposed Cost: The Libertarian Conception of Interpersonal Liberty," *Journal of Applied Philosophy*, 14: 3 (1997): 277–288, and J. C. Lester, *Explaining Libertarianism: Some Philosophical Arguments* (Buckingham: The University of Buckingham Press, 2014), chap. 10.
9. Some typical, and thereby useful, misunderstandings that arise in one anonymous review will be dealt with in footnotes at various points.
10. Two classic examples are R. Nozick, *Anarchy, State, and Utopia* (Oxford: Basil Blackwell, 1974) and M. N. Rothbard, *For a New Liberty: The Libertarian Manifesto* (Auburn, AL: Ludwig von Mises Institute, [1973, 1978] 2006). But see virtually any mainstream libertarian text. The philosophical sophistication of the Nozick text obscures the fact that it is at the same time ultimately superficial as regards some of the issues raised in this essay.
11. A good short example is R. Long, "Why Libertarians Believe There Is Only One Right" (praxeology.net/onerightREVdraft.doc, accessed May 25, 2016). And see the critical response that is Lester, *Explaining Libertarianism*, chap. 6.
12. D. Friedman, *The Machinery of Freedom: Guide to a Radical Capitalism* (2nd ed. La Salle, Ill.: Open Court, 1989), chaps. 41, 42. And see the critical response that is J. C. Lester, *Escape from Leviathan: Libertarianism Without Justificationism* (Buckingham: The University of Buckingham Press, [2000] 2012): 71-123.

The problem is that both the best criticisms and the best defences are fatally flawed insofar as they incorrectly assume, as they usually do, that something approximating to the current orthodox philosophical assumptions[16] is necessary and sufficient to explain libertarianism and that supporting justifications[17] are possible. General problems with the orthodox assumptions will be explained in what follows. More-detailed criticisms can be found in the texts cited in the various footnote references. But this essay is primarily a short explanation of the heterodox paradigm.

3) A clearer approach: separating distinct issues

An adequate philosophical theory of libertarianism needs to make the following distinctions:
1) An abstract theory of interpersonal-liberty-in-itself that is independent of any type of property (i.e., ownership), or normativity.[18]
2) The practical and contingent, derived, objective applications of the abstract theory.
3) The separate moral and value defences of the abstract theory and its objective applications.
4) At every stage the abandonment of 'supporting justifications' in favour of critical rationalism, which explicitly uses conjectures and criticisms.

That these distinctions are needed should become clearer as this explanation proceeds. This approach appears to be sufficiently radical to amount to a different philosophical paradigm of libertarianism. And this is a fortiori true if also combined with the extreme version of the, implicit, classical-liberal/libertarian compatibility conjecture: there is no systematic *practical* clash between interpersonal liberty (or the libertarian ideology) and want-satisfaction welfare (or preference-utilitarian morals). Some general philosophical explanations of this compatibility will be suggested at various points, but there cannot be a comprehensive social scientific defence of this conjecture here. The following account attempts a new, short, explanation of just such theories of liberty and libertarianism.

4) Interpersonal liberty

There are various competing conceptions of interpersonal liberty. But there are only two dominant conceptions in both common sense and in political or social philosophy. They are not negative liberty and positive liberty, as might be supposed. Rather, they are both types of so-called 'negative liberty'. One conception is that of people not *initiating* constraints on each other. This is something that could, as far as is practical, be universally observed: everyone could have maximal such liberty at the same time. This is more or less the conception that John Locke (1632-1704) uses in his *Second Treatise of Government* (1690).[19] The other conception is that of people not being constraints in any way on each

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13. "For Nozick, … there is justice when there is no restriction on freedom. But freedom is then itself defined in terms of non-violation of rights, and the result is a tight definitional circle and no purchase either on the concept of freedom or the concept of justice", G. A. Cohen, *Self-Ownership, Freedom, and Equality* (New York: Cambridge University Press, 1995): 61.
14. D. Sobel, "Backing Away from Libertarian Self-Ownership," *Ethics*, 123 (2012): 32–60; D. Sobel, "Self-Ownership and the Conflation Problem," *Oxford Studies in Normative Ethics: Volume 3*, Mark Timmons (Ed.) (Oxford: Oxford University Press, 2014): chap. 5.
15. E.g., W. Block, "David Friedman and Libertarianism: A Critique," *Libertarian Papers*, 3: 35 (2011): 1-33. And see the response that is Lester, *Explaining Libertarianism*, chap. 8.
16. Self-ownership, homesteading, just property, and either deontologism or consequentialism are somehow 'foundational' to libertarianism—and all without an explicit theory of liberty.
17. I.e., "supporting justifications" as such, not of any particular assumptions. A review overlooks or misunderstands the references to critical rationalism and asks, "Supporting justifications of what?"
18. It will later be explained how Hobbes's account in *Leviathan* is not adequate.
19. For instance, in section 57: "Liberty is freedom from restraint and violence by others; and this can't be had where there is no law. This freedom is not—as some say it is—a freedom for every man to do whatever he wants to do (for who could be free if every other man's whims might dominate him?); rather, it is a freedom to dispose in any way he wants of his person, his actions, his

other. And this is something that will, in practice, be a universal zero-sum game: someone can gain such liberty only at the expense of someone else's loss of such liberty. This is more or less the conception that Thomas Hobbes (1588-1679) uses in his *Leviathan* (1651), but here restricted only to interpersonal constraints—which Hobbes does not do.[20] Neither conception is usually explicitly, clearly, and abstractly theorised, even by libertarian philosophers. Consequently, people sometimes switch between one and the other, or conflate the two, without realising that this is what they are doing.[21]

5) Libertarianism

'Libertarianism', in the social or political sense, is a modern name for a long-existing subset of classical liberalism:[22] that which advocates maximum interpersonal liberty and either a minimal 'night watchman' state (minarchy) or no state (anarchy).[23] The version of interpersonal liberty that libertarianism tends to assume is no-initiated-constraint liberty. This will be the primary focus here. However, it sometimes assumes no-constraint liberty. A clearer and more explicit theory of each can avoid much philosophical confusion and solve many related philosophical problems. This is useful not only for libertarianism; it will also apply to the common-sense conceptions whether or not they are being used by libertarians.

Some self-described libertarian texts make the characterisation of 'libertarianism' more precise. They assume that libertarianism involves "foundational philosophical commitments"[24] to some combination of certain deontological rights,[25] or self-ownership,[26] or the non-aggression principle (or axiom),[27] or

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possessions, and his whole property—not to be subject in any of this to the arbitrary will of anyone else but freely to follow his own will, all within whatever limits are set by the laws that he is under." However, as we shall see later, bringing in "property" and "law" at this stage is partly what prevents this account from being the abstract theory of liberty that will be argued to be necessary.

20. For instance, in chapter xxi. Of the liberty of subjects, "Liberty, or FREEDOME, signifieth (properly) the absence of Opposition; (by Opposition, I mean externall Impediments of motion;)" ("Liberty What"); and "A FREE-MAN, is "he, that in those things, which by his strength and wit he is able to do, is not hindred to doe what he has a will to"" ("What It Is To Be Free"). And so we see that Hobbes's account relates to zero-sum action.

21. Such due, general, acknowledgements to Locke and Hobbes are not intended to imply that what follows is about the details or implications of their specific theories of liberty.

22. For instance: "political philosophy that takes individual liberty to be the primary political value. It may be understood as a form of liberalism …." D. Boaz, "Libertarianism"; "full-fledged libertarianism, as opposed to more moderate forms of classical liberalism." M. Zwolinski, "Libertarianism"; "Depending on the context, libertarianism can be seen as either the contemporary name for classical liberalism, adopted to avoid confusion in those countries where liberalism is widely understood to denote advocacy of expansive government powers, or as a more radical version of classical liberalism." D. Conway, "Liberalism, Classical", in R. Hamowy, *The Encyclopedia of Libertarianism* (Thousand Oaks, California: SAGE Publications; Cato Institute, 2008): 295–298.

23. On anarchism, see especially G. de Molinari, *The Production of Security* (New York: Centre for Libertarian Studies, [1849] 1977), and C.-F. Bastiat, *The Law* (http://bastiat.org/en/the_law.html, 1850). But there are also Jakob Mauvillon (1743–1794), Julius Faucher (1820–1878), and various others. Hence libertarianism (avant la lettre) seems to have long been be a type of classical liberalism, contra S. Freeman, "Illiberal Libertarians: Why Libertarianism Is Not a Liberal View," *Philosophy and Public Affairs*, 30, 2 (2001): 105-151. It is less clear that the politically-correct "liberalism" defended in that essay is entirely a version of classical liberalism.

24. "Most of the libertarian theories we have surveyed in this article have a common structure: foundational philosophical commitments are set out, theories are built upon them, and practical conclusions are derived from those theories." M. Zwolinski, "Libertarianism".

25. The most well-known being R. Nozick, *Anarchy, State, and Utopia*.

'just' (i.e., 'libertarian') private property, etc. This might[28] be seen as implying that the overall approach taken here is 'not, real, libertarianism'. Such a position would appear to be somewhat like a Catholic rejecting Protestantism as 'not, real, Christianity'. It would be dogmatism rather than precision. As what follows is explained as a heterodox paradigm of libertarianism in which abstract liberty is explicitly theorised and very similar practical implications are derived, it would seem perverse to deny that it is a form of libertarianism. If anything, it appears to be more coherently libertarian than the mainstream varieties.

6) An abstract theory of interpersonal liberty

6.1 The philosophical problem and its intuitive but incorrect solutions

A 'practical theory of interpersonal liberty' can be explained as an attempted account of what interpersonal liberty involves in contingent practice as regards rules and consequences. This can be done by using an intuition that implies a tacit theory[29] of interpersonal liberty; and this is what most orthodox accounts of libertarianism do. But if we are explicitly to derive these rules and consequences, then we first need to have an explicit, abstract theory of interpersonal liberty. An 'abstract theory of interpersonal liberty' can be explained as an attempted account of what interpersonal liberty is in itself before any contingent practical applications.

How is an abstract theory of the liberty of libertarianism—and thereby also of the relevant dominant common-sense conception—to be understood? To have a theory of liberty that inherently involves particular property rules and particular moral rights is not to have a clearer and stronger theory. Rather, it is to attempt to have an unfalsifiable or uncriticisable theory. And that, as Karl Popper explained, is not clearer and stronger: it is really to avoid saying anything substantive at all. It is certainly to have no proper theory of liberty. Instead, it is in effect to assume the legitimacy or morality of certain rules or rights and then stipulatively or persuasively—and thereby vacuously—define those rules or rights as 'libertarian' and their flouting as 'unlibertarian' (or even 'aggression'[30],

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26. Which even "left libertarianism" makes foundational. See P. Vallentyne, H. Steiner, and M. Otsuka, "Why Left-Libertarianism Is Not Incoherent, Indeterminate, or Irrelevant: A Reply to Fried," *Philosophy & Public Affairs*, 33, 2 (2005): 201-215.

27. For instance, W. Block, "The Non-Aggression Axiom of Libertarianism" (LewRockwell.com: http://archive.lewrockwell.com/block/block26.html, 2003).

28. Or, *therefore*, it also might not. This is not to imply, as a *JLS* review incorrectly supposes is intended, that all foundationalists would reject this as a form of libertarianism. However, some responses appear to do so; not least, W. E. Block, "Response to J. C. Lester on David Friedman on Libertarian Theory", *MEST Journal*, 7: 1 (2019), 127-155; which, for instance, calls "private property rights, the be-all, and end-all of libertarianism, along with the NAP" (142). Reply in progress.

29. A quoted *JLS* review comment with interspersed replies: This "suggests that intuitions about liberty are based on tacit theories of interpersonal liberty". Yes, intuitions that rules and consequences can be categorised as fitting or not fitting liberty in practice thereby imply possession of some sort of theory, however muddled or protean, of abstract liberty to sort them. However, the far more important—non-psychological—matter here is that the possibility of an explicit, abstract theory of liberty is implied by such categorisation. "But it isn't clear that such theories have to be based on complete theories of interpersonal liberty". It is clear that they rarely are; they are usually inchoate and tacit. Why next mention "in particular theories of libertarian rights"? Why bring in rights at this stage? Before one can coherently assert "libertarian rights" one must first determine what is non-normatively libertarian (what factually fits liberty); whether there is a right to that is a separate, later, and normative question. "Someone might, […] if Popper is right, have some theory in mind, but it might not be a worked-out but tacit complete theory of interpersonal liberty." Of course it isn't "worked-out" or "complete". It would hardly be tacit if it were.

30. The idea that libertarianism is about the absence of aggression, or the Non-Aggression Principle (NAP), or Non-Aggression Axiom—as found in W. Block, "The Non-Aggression Axiom of Libertarianism", for instance—means, it is explained, that one should "not initiate (or threaten)

or—still worse—'coercion'[31]). Texts that are critical of libertarianism often note this. Therefore, it is better not to tie a theory of interpersonal liberty to specific property rules or to specific moral rights. Then it can be used independently to assess and explain whether any property rule or any moral right is in accord with liberty. Moreover, it is necessary that some such abstract theory is possible. For it is always coherent to ask whether, and how, some property rule or moral right is compatible with interpersonal liberty as a factual matter—rather than by some ideological definition of 'liberty' or 'libertarianism'.[32] And if mainstream libertarianism—of all ideologies—cannot give a coherent answer to such a question, then it is in a state of philosophical confusion that is acutely ironic: it can't; it is. In any case, the correct eleutherology (philosophical study and theorising concerning interpersonal liberty) is a fundamental philosophical problem—not only one for libertarians. It is surely no less important than the correct epistemology, for instance. Therefore, if the following account is not the correct abstract theory of interpersonal liberty, still there must be such an abstract liberty to be correctly theorised and it is important that it be attempted.

Is it possible to formulate a libertarian theory of interpersonal liberty that is sufficiently abstract such that it is both non-propertarian and non-normative? First consider the dominant 'Lockean' conception. Conceptually, liberty is always about the absence of some kind of constraints on something. Here it is about the absence of some kind of constraints on people by people: interpersonal constraints (it is not about intrapersonal constraints—limits within a person—or the constraints of the natural world). More precisely here, it must be some sense of the absence of people *initiating*—whether intentionally or not—relevant constraints on each other in some way: a *purely* reactive or defensive constraint would preserve interpersonal liberty; a proactive or offensive constraint would reduce interpersonal liberty. But what, in the most abstract sense, is it about a person that cannot be proactively constrained by other people if he is to have his interpersonal liberty? This is the key question.

As we have seen, it cannot be either his property or his rights as such—however intuitive such answers may appear.[33] It may, of course, be some of, or all of, or only his property or rights where these are compatible with liberty. But that brings us back to the problem. Without an independent,

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violence against the person or legitimately owned property of another." Even if we interpret "violence" to mean only 'violations', this raises two crucial problems. 1) How do we know that any so-called "legitimately owned property" actually fits interpersonal liberty (after all, not all property rights fit liberty) unless we have an explicit abstract theory of liberty? 2) If "non-aggression" is absolute (as "non" ipso facto implies), then how can any 'boundary crossings', such as even the smallest pollution, be allowed or otherwise dealt with? Rothbard and his followers attempt answers (see, for instance, W. Block, "David Friedman and Libertarianism: A Critique", especially 2.2-2.5); but they do not work (see in response, Lester, *Explaining Libertarianism*, chap. 8, especially 2.2-2.5).

31. The narrow, plain-English meaning of 'coercion' is "the use of force to persuade someone to do something that they are unwilling to do" (https://dictionary.cambridge.org/dictionary/english/coercion), or "[a]ctual or threatened force for the purpose of compelling action by another person" (https://en.wiktionary.org/wiki/coercion). In this sense, legitimate coercion is not a contradiction in terms. A libertarian society would use legitimate coercion to defend liberty (and sometimes coercion is contractual or even the whole point of some libertarian interaction: boxers are using coercion on each other). However, libertarian texts sometimes use 'coercion' to mean any action that is 'unlibertarian' or flouts 'libertarian' property rights. For instance, "…liberty is by definition an absence of coercion…"; Tibor Machan, *Classical Individualism: The Supreme Importance of Each Human Being* (Abingdon: Routledge, 1998), p.184.

32. A quoted *JLS* review comment followed by a reply: "This assumes that in order to answer the question, one must have a theory of interpersonal liberty. But couldn't one attempt to answer the question by pre-theoretical intuitions about liberty?" No, "pre-theoretical intuitions about liberty" cannot *explain* "whether, and *how*, some property rule or moral right is compatible with interpersonal liberty as a *factual* matter". At most they can assign an intuitive libertarian category to the "property rule or moral right".

33. What is currently intuitive for holders of any theories may change for them in the light of a perceived better alternative.

explicit, and abstract theory of liberty we cannot determine with any clarity what is compatible with liberty. The other main intuitive contender is actions. That also runs into clear difficulties. Proactive constraints on possible actions that someone does not want to perform may not be cared about, or even noticed; so they will not be in any way oppressive (felt as constraining). And some proactive constraints on wanted actions will be perceived as much more oppressive than others in a way that cannot be explained merely in terms of actions. Moreover, sometimes it is not an action but some other wanted state of affairs that might be being constrained; and, again, in a way that admits of theoretically unexplained degrees of oppression. Therefore, abstract interpersonal liberty also does not appear to be about the absence of proactive constraints on actions as such.

6.2 The counter-intuitive but correct solution

So what is being relevantly constrained? The clues are in the references to people's wants. It is the proactive constraining of the satisfaction of wants. This is the most general description of what we do not want others to proactively constrain with respect to ourselves. And, therefore, it seems to fit what is required for the abstract theory of liberty, despite being a counter-intuitive answer for most orthodox libertarians. Hence we can theorise such 'libertarian liberty' as 'the absence of interpersonal proactively-imposed constraints on want-satisfaction' (or 'preference-satisfaction': as no distinction is made here). Ex hypothesi, this rules out both proactively imposing wants themselves (by—ipso facto unwanted—violent threats, fraud, secret drugging, etc.) and want-satisfactions that themselves would proactively constrain another person's want-satisfactions (for constraints on them would not be proactive but reactive). Otherwise, the wants may be indefinitely many, heterogeneous in nature, sometimes apparently incommensurable, varying in intensity and importance, biological necessities, or entirely contingent and transitory.

A focus on—and aggregation of ostensibly disparate types of—want-satisfactions ought not to seem too strange. Such want-satisfaction is fairly well understood in economics and in utilitarianism: whatever diverse things people actually want, they must in some sense be obtaining ex ante utility (or usefulness) from them; and people do make some kind of utility-maximising trade-offs among all of their own very different types of wants. Want-satisfaction, in itself, is even one interpretation of 'utility' in economics and in preference utilitarianism. Preference utilitarianism is distinguished from the other types by not necessarily having a positive conscious sensation as an effect or a goal. It has only a conscious 'utility' as a cause or motive: at the thought of achieving whatever is wanted (even if that is never experienced or known to come about by the person who wants it to be). Consequently, happy delusions are ruled out—unless those happen to be what someone spontaneously does want. Hence preference-utility (or want-satisfaction) is part of what helps us to make sense of the abstract conception of liberty and also of liberty's ultimate congruence with maximising one conception of human welfare. For human welfare is rightly perceived as the other main social desideratum, but wrongly perceived as often in serious and systematic conflict with liberty.[34]

A possible—even likely—criticism may be that this is, therefore, really some strange variety, or subset, of utilitarianism being presented as libertarianism. But positively promoting utility is no part of this abstract theory of liberty, let alone using some people for the benefit of others. The theory solely rules out proactive interpersonal constraints on individuals achieving their (non-proactively-constraining) goals. Utility does not even need to be mentioned. However, it is sometimes convenient to speak in terms of utility in order to explain the congruence of liberty with free-market economics and preference-utilitarian welfare.

A further criticism may be that, nevertheless, there are still some interpersonal-utility comparisons implied by this theory, and that this is—at the very least—problematic. And here it has to be conceded that an element of interpersonal-utility comparison is indeed implied. It appears to be theoretically unavoidable for the abstract theory. However, as we shall see later, it is only necessary to make the

34. As already stated, this conjecture cannot be defended here in social scientific terms. That is primarily a task for economists.

plausible assumption that people are very broadly similar in their responses to certain very fundamental choices. This is not to suppose, or require, or imply either complete homogeneity or any cardinality of people's want-satisfaction responses.[35]

Now that the abstract theory of interpersonal liberty has been theorised as "the absence of interpersonal proactively-imposed constraints on want-satisfaction", it may be convenient to abbreviate this unwieldy expression. 'No' is shorter than "the absence of"; we are unlikely to forget that it is "interpersonal", so that can usually be omitted; but "proactively" is crucial here, so best included (usually, at least); "constraints on" someone's "want-satisfaction" (from what it otherwise would have been) is an 'imposed cost' to him (in the sense of the opposite of a merely withheld benefit). Therefore, the full formulation can conveniently be abbreviated to 'no proactively-imposed costs' (or more briefly, 'no proactive impositions'). Ten words have been reduced to four (or three). Whenever an abbreviated formulation is used, the full theory will be implied. Thus any alleged 'proactively-imposed cost' must in principle be translatable into the longer formulation. But none of these particular words really matter. The same abstract theory of liberty might be expressed in a different way, as long as the general idea is understood. (And it is now possible simply to add—by analogy with all of the foregoing explanation—that the no-constraint, 'Hobbesian', theory of interpersonal liberty will be 'no impositions'.)

Note that this verbal formulation is not a *definition* of the word 'liberty'. It is a philosophical *theory* about the nature of the abstract liberty that libertarianism, and common sense, presupposes or entails. Definitions attempt to provide the meanings of words (whether by usage or by stipulation). Theories attempt to provide descriptions of the world. And the world includes the realm of all abstractions (which is also inhabited by all the entities of logic and mathematics). It is very remiss to fail to make, or fail to grasp, this crucial distinction. It is part of the philosophical philistinism of common sense when philosophy is seen as 'merely arguing about words'. Indeed, one orthodox response to what is being discussed here is that it is mere semantics that does not really contradict or correct anything in mainstream libertarianism.[36] As ought to be clear, that response does not bear serious philosophical scrutiny.[37]

This may still appear to be too unlike any theory of what libertarian liberty plausibly could be. But we have seen that orthodox libertarianism has no proper abstract theory of liberty, and that abstract liberty cannot be explained in terms of property, or rights, or actions. That mainstream libertarianism does not have an explicit abstract theory of interpersonal liberty is as strange and scandalous as it would be if utilitarianism were to offer no explicit abstract theory of utility (in fact there are several). It might also be thought that this unorthodox account has not been given a, sufficient, 'supporting

35. At this point a review makes a somewhat muddled intervention: "if rights and non-aggression are just contingently related to liberty, how is it that wants are intrinsically connected to liberty in a way rights are not? Unless 'wants' and 'liberty' are equivalent, the inherent connection between the two calls out for an explanation that is not given." A reply is best given in stages. 1) It is always best to accurately quote rather than to assume that a paraphrase is accurate. 2) To make a conceptual distinction between two things is not to imply that they are only "contingently related" (any particular number is conceptually distinct from mathematics as a subject, but they are necessarily related). 3) A positive theory of interpersonal liberty and what it entails in practice appears to be conceptually separable from a normative theory of "rights and non-aggression" and what they entail in practice. 4) It is explained in the text how wants relate to an abstract (non-propertarian and non-normative) theory of interpersonal liberty. 5) Rights are either propertarian or normative, and so cannot be part of any such abstract theory.

36. Private communication. Name withheld to protect the guilty.

37. A review asks, "How is it that the meanings of words and descriptions of the world are so separate?" Put as simply as possible, to define what a word means ("God", "phlogiston", "Yeti") is not to assert that the definition describes a real thing. Here we appear to have a real abstract thing—a tacit theory of abstract libertarian liberty—and we are attempting to provide an explicit theory that accurately describes it.

justification'. And that is correct. For, as critical rationalism explains, 'supporting justifications' are logically impossible. Nevertheless, it would still be possible to further explain and defend this abstract account of interpersonal liberty at an abstract level. But rather than do that in this new, short, explanation, it will now be applied to the apparent contingent circumstances of the world. Will it produce the results that libertarianism requires? If it does, then that should itself help to explain and defend it.

7) Hypothetical derivations of self-ownership and external property

As initially stated, the focus has been on the no-initiated-constraint—'Lockean'—view of interpersonal liberty. But there are self-described 'Hobbesian' libertarians.[38] It should be illuminating to show how both of the main abstract theories of interpersonal liberty explained here can be applied to derive practical conclusions. These are hypothetical derivations concerning what the application of abstract liberty factually, or positively, entails; they are not advocatory, or normative. Then there is also the issue of whether these approaches are in any way different in their practical outcomes.

7.1 Applying no-proactive-imposition liberty

Here interpersonal liberty is interpreted as being free from peoples' *proactively*-imposed constraints on our want/preference-satisfactions; that is, people are not initiating interferences—whether intentionally or not—on our having what we want. If no one is proactively constraining us in this way, then we have full interpersonal liberty. If Adam initiates any control on—interferes with—Eve's body against Eve's preferences, then that is a proactive constraint on Eve: the body that, contingently, Eve more or less is. We can imagine a world where a person (understood as a unitary consciousness with appropriate capacities) does not care about control of their body or is not physically attached to a particular body (and can easily move to a different one). In either case, liberty might have different practical implications. But in the reality we seem to observe, for Adam to flout Eve's preferences as regards her body is not for Adam to exercise his own interpersonal liberty—as here conceived—but to exercise power over another person. And if Eve manages to prevent this, then she is not, significantly, proactively imposing on Adam (except, for instance, to the trivial, and reciprocal, degree that her body comprises natural resources that Adam might otherwise have used[39]) but reactively defending herself.[40] Hence, having ultimate control of one's body normally follows from having (more strictly,

38. Such as Hillel Steiner and Jan Narveson.

39. Therefore, even this example does have some conflict in applying pure liberty. In which case it is immediately clear that all that can be achieved is the more libertarian option (maximising liberty) and not perfect liberty. Another example might be the non-trivial disutility proactively imposed on Adam by Eve's existence and rejection of him versus the extreme disutility of Eve if Adam were to force himself upon her to reduce his disutility.

40. A quoted *JLS* review comment with interspersed replies: "The author plausibly conjectures that the disutility to an individual from allowing interferences with his body will normally outweigh the utility gained by someone who interferes with it." That utilitarian comparison may be true, however what fits abstract liberty is not calculated by what is utilitarian. The correct abstract libertarian comparison is that the proactively imposed disutility on person A of interferences with A's body by person B far outweighs any proactively imposed disutility on B by his being required not thus to interfere. However, the basic idea can also be explained intrapersonally: it is far less of a proactively imposed cost to be required not to interfere with other's bodies than it is to be required to suffer their interference with yours. This "seems very plausible for two-person cases, but […] what if one person, or the members of a small minority, is hated by a vast number of people and elimination of the hated would increase the utility of the majority?" Or, rather, what if it would decrease the proactively imposed disutility of the majority that the existence of one person, or a minority, causes? This is somewhat similar to one of the many criticisms dealt with in Lester, *Escape from Leviathan*: "ii. A Critic of Religion" (66-69) (not all of those criticisms and replies could be incorporated into this relatively brief exposition). However, to reply directly but briefly, consider the universalised and long-term effects of institutionalising a rule that a sufficiently hated person, or minority, can be put to

maximally applying) such liberty. This factual and contingent consequence is before needing to assume the legal institution of property (or needing to assume morals either). However, in order better to protect this ultimate control of one's body, it is efficient to institute self-ownership (which can be done with spontaneously-arising law[41] rather than by state command[42]).

With external resources (that is, resources external to people's bodies) it might be supposed that, logically, we at least need to derive self-ownership first and proceed from that. This does not appear to be the case, for the explanation runs independently: self-ownership does not need to be mentioned, or presupposed, or implied. In fact, a living human body can be thought of as simply one type of resource; just one that contingently happens to be tied to a particular person (intellectually conceived) with very strong and stable fundamental wants or preferences about controlling it. However, because bodies are more or less what we are, and external resources are not, the situation with external resources is somewhat different.

Once we have begun to use[43] a natural resource for some purpose, then it typically proactively[44] imposes a significant cost on us if someone takes that resource from us or uses it in a way that flouts our purposes. By possessing and controlling it we might proactively impose a cost on other people too; but this is mainly to the, usually small and reciprocal, extent of the unmodified resource's want-satisfaction value to them. For to be denied a benefit that someone else has somehow produced—such as a wooden cabin—is not in itself to be proactively imposed on.[45,46] Therefore, it appears that the

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death to minimise the proactively imposed cost that their mere existence causes. This would universally undermine toleration and stoke up hatred and fear. No one would dare to become too well known in case that somehow turned to infamy. To even express an opinion in public might become a serious risk. Therefore, such a rule would appear to allow more proactive impositions that not allowing it. Expressed individually, it is a lesser proactively imposed cost by far to know that someone you hate continues to live (even though you never need to see him or hear anything about him: if you choose to find out about him—or choose to experience media that might mention him—then that is not proactively imposed on you) than it is to live in fear that you, or any one of the many individuals that you value, can be killed if enough people somehow come to feel sufficient hatred.

41. Or 'natural law', but only in the same sense that there are natural languages.

42. See, for instance, B. L. Benson, *The Enterprise of Law* (San Francisco: Pacific Research Institute for Public Policy, 1990).

43. There need be no labour-mingling. It is possible to find a use for something by its remaining as it was found: a beautiful tree outside our abode, or the sunlight that falls daily on us. Neither need labour-mingling be using something: to walk across mud is to mix one's labour of walking with that mud, but not thereby to use the mud (which is, we may suppose, a mere nuisance). Hence, it is use that is fundamental.

44. A review asserts that "no account of what 'proactively' means or describes is adequately given". Why is this needed? 'Proactive' is in most dictionaries; it is the antonym of 'reactive'. Perhaps the review means 'proactively imposed'. However, a little above in the text that expression is explained as "initiating interferences". And earlier still the text explains "a *purely* reactive or defensive constraint would preserve interpersonal liberty; a proactive or offensive constraint would reduce interpersonal liberty". Can this be made plainer? The basic idea is more generally expressed simply as an 'interference'. But rather than labour this point further, it is probably easier to deal with specific examples as they arise.

45. However, to simplify matters, this ignores discussions of costs relating to envy, frustrated desire, lost status, 'utility monsters', and other mainly 'self-inflicted', or moral hazard, or reciprocal examples: all of which it would, at least overall and in the long term, proactively impose more to allow to limit ultimate control by initial use and subsequent voluntarily agreed transfer. But see the index of Lester, *Escape from Leviathan* for relevant discussions of such things.

46. A review asserts that "the claim that ownership does not proactively frustrate the non-owners' preferences is ad hoc at this point." Several responses are relevant. 1) Accurate quotation is better than inaccurate attempted paraphrase. 2) There is no such assertion or implication. 3) This is "at this point" about ultimate control and not about "ownership". 4) It is stated in the main text that "we might

least proactive[47] imposition on people's preference-satisfactions is usually to allow ultimate control to the initial user,[48] and thereafter control by voluntarily agreed transfer[49] (as mentioned above, these interpersonal comparisons plausibly assume only that people are very broadly similar in their responses to certain fundamental choices). Assuming the theory of liberty, this entails that it usually maximally observes, or instantiates, liberty to have personal ultimate control of external resources where one has initiated a use (or subsequently received them by voluntarily agreed transfer). This factual and contingent consequence is also before needing to assume the legal institution of property (or needing to assume morals). However, in order better to protect liberty, it is efficient to institute property rights in such resources.[50]

In short, we can derive both self-ownership and external private property (usually arising from initial use and thereafter voluntarily agreed transfer) because, contingently (for we can imagine worlds where this is not so), they maximally observe such interpersonal liberty. They are not what interpersonal liberty is in abstract theory, but what maximum interpersonal liberty entails in practice (hence they are not, philosophically, the 'foundational' assumptions of libertarianism—as is often supposed). And once self-ownership and such property are thus derived from maximally observing abstract liberty, we can use them as strong, prima facie, positive rules as to what is 'libertarian': that is, factually maximally liberty-instantiating in practice. Therefore, we have arrived at the two main rules that libertarians intuit to fit liberty, but now with an explicit, non-propertarian, non-normative, abstract theory of liberty to explain that intuition.

Such 'rule libertarianism' (but non-moral at this stage) is analogous with rule utilitarianism. This may sound odd mainly because orthodox libertarianism jumps straight to normative rules without any explicit non-normative, act-libertarian, abstract theory. It might even seem that this abstract theory necessarily implies act-libertarianism. But that seems to be as mistaken as the view that utilitarianism necessarily implies act-utilitarianism instead of rule-utilitarianism.[51] Now that these practical property rules are derived, it is only necessary to go back to the abstract theory of interpersonal liberty in problem cases or to answer further philosophical questions.

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proactively impose a cost on other people too; but this is mainly to the, usually small and reciprocal, extent of the unmodified resource's want-satisfaction value to them." 5) It is stated in the footnote that "to simplify matters, this ignores discussions of costs relating to envy, frustrated desire, lost status, 'utility monsters', and other mainly 'self-inflicted', or moral hazard, or reciprocal examples …" (and a reference to discussions of such issues is given). 6) There is a severe limit on how much detail is possible in this relatively short explanation.

47. A review asserts that "it is not clear how degrees of proactivity are even relevant at this point." It is not about "degrees of proactivity" but 'degrees of proactively imposed cost'. It has already been explained how these can be on both sides with both a person's body and external resources. In all such, ubiquitous, cases liberty can only be maximised.

48. But exceptions can be imagined, such as where this monopolises a vital natural resource that other people would themselves have discovered.

49. A review asserts that the "conclusion on this point is insufficiently supported". This is, again, to overlook, or reject without explanation, the assumed epistemology that is cited and outlined earlier. It would only be relevant to produce a criticism that is inconsistent with the text.

50. A review asserts that "the notion that property and trade maximize liberty (and not merely want satisfaction) […] requires both [1] data to show that property and trade do satisfy wants more than the alternatives and [2] an explanation of how those satisfied wants are indeed of the type that are included in the theory of liberty." Replies to both points follow. 1) This is philosophy and not social science, so empirical "data" cannot usually be more than background assumptions. Assuming critical rationalism (as this essay does), which includes falsificationism, no amount of "data" can "show" (i.e., support or justify) anything. What has here been called the "classical-liberal/libertarian compatibility conjecture" cannot be defended here apart from a few passing philosophical aspects. 2) A philosophical explanation has been provided of the fundamental relationship between want-satisfaction and the property and trade that is implied by applying the abstract theory.

51. If the compatibility conjecture is true, then libertarian rules are also utilitarian rules.

However, there is an immediate and obvious problem that has already been touched on with respect to deriving self-ownership and external-resource ownership. Very often a near-absence of proactive impositions is impossible because there is a significant reciprocal clash. For instance, either you suffer the smoke-pollution from my fire or I suffer going without warmth and cooking: both the allowance and the disallowance of the fire will proactively impose, but on different people (confused criticisms of deontological or rule libertarianism often see *only* the allowance of pollution as imposing[52]).[53] In such cases it is impossible to achieve anywhere near perfect liberty or to apply any plausible interpretation of the so-called 'non-aggression principle', for liberty can only be maximised as best as is practical; and this might involve compromise or compensation. It is important not to misunderstand this point. Dealing with inevitable clashes by *maximising* liberty might appear to be collectively consequentialist (in some non-moral sense at this stage, at least). But that can't be right; for no one's liberty is curtailed in order to promote the maximum liberty of other people in general. It's simply that maximisation is all that is possible when specific liberties conflict. These specific liberties might include indefinitely large groups of indeterminate people ('the public'), and be best dealt with by a class, or representative, law suit. But even such 'collective' minimising of proactively imposed costs on indeterminate people is not 'collectivist' in any way that overrides libertarian individualism in principle. As a consequence, applying this theory of liberty inherently internalises externalities (but in a pre-propertarian sense) as far as is practical and thereby tends to be economically efficient. And this is one significant philosophical link between liberty or libertarianism and want-satisfaction or preference-utilitarianism.

Once all this is understood, it is possible to apply the abstract theory of liberty to derive relatively precise and clear implications for an indefinite variety of other issues within libertarianism. For instance, intellectual property, restitution and retribution, emergency situations, etc.[54] But none of this can be attempted here.

7.2 Applying no-imposition liberty

As we have seen, a straightforward no-constraint-on-actions approach to interpersonal liberty is in itself more or less zero-sum: if you have more interpersonal liberty, then someone else has just that much less. By this conception, a slave-owner qua slave-owner has more liberty where, and to the exact extent that, his slaves have less: whatever he can enforce that the slaves cannot prevent. Such zero-sum interpersonal liberty cannot in itself be maximised or protected; it can only be competed over or redistributed for some non-liberty reason—such as utility or equality. Therefore, it cannot be the liberty required by most versions of libertarianism (and one common-sense conception). Yet some libertarian texts do seem to accept it. They usually opt for something along the lines of 'maximum like (i.e., similar or equal) [valuable] liberty for all'—the word 'valuable' often being implicit.[55] Hence, in these theories, liberty-in-itself cannot be the criterion or the goal that is to be maximised or

52. For instance, M. Zwolinski, "Libertarianism and pollution: the limits of absolutist moralism" (Institute of Economic Affairs, Blog, 20 February, 2015). And see the reply that is Lester, *Arguments for Liberty: a Libertarian Miscellany*, (Buckingham: The University of Buckingham Press, [2011] 2016), chap. 31.

53. Either of us could move our dwelling places, of course. But that would be, we may assume, an even greater proactive imposition on whichever side did this.

54. As found throughout Lester, *Escape from Leviathan*; *Arguments for Liberty*; and *Explaining Libertarianism*.

55. For instance, "every man may claim the fullest liberty to exercise his faculties compatible with the possession of like liberty to every other man" and "each has freedom to do all that he wills provided that he infringes not the equal freedom of any other"; Herbert Spencer, *Social Statics* (John Chapman: London, 1851), chap. 4, sec. 3. More recently, "everyone has an equal right to the most extensive liberty compatible with the like liberty for all"; John Rawls, *A Theory of Justice* (Harvard: Harvard University Press, 1971), sec. 11.

protected. They have the rather different criterion or goal of *valuable* liberties that *all can share equally*.

However, if the subjective intensities of interpersonal impositions are taken into account, then this does allow for a liberty-maximising interpretation. Adam might prefer to have ultimate control of Eve's body. And Eve prefers that Adam doesn't. In the event of such clashes of no-imposition liberty, the most 'libertarian' (i.e., liberty-instantiating) approach is to have whichever option is the lesser constraint.[56] Almost universally, it is a greater constraint on one's preference-satisfactions to have any aspects of one's body under someone else's ultimate control than it is to be denied any similar control of another person's body (or to have any other system of bodily control). Therefore, no-imposition liberty is maximally observed if people have ultimate control of their own bodies. This factual consequence is before the legal institution of property (and also before morals) needs to be assumed. However, an efficient way to protect this ultimate control of one's body is then to institutionalise this as the property right of self-ownership.

A similar type of argument also applies to the control of all other resources. It is typically a greater constraint on our preference-satisfactions for other people to deny us ultimate control of the resources we already use (and thereafter receive by voluntarily agreed transfer), than it is to be denied access to resources that others are already using. Etc., etc.[57]

7.3 Do these two theories have any different practical outcomes?

In light of these two explanations of interpersonal liberty, one important question immediately arises: are they fully equivalent in terms of what they entail in practice? Both conceptions of interpersonal liberty appear—at least initially—to have the same practical implications. Thus one could explain interpersonal liberty using either. With the no-imposition approach, we still have to say that a slave-owner is having his liberty lessened if his slaves are freed without his consent; just not as much liberty as his slaves gain by being freed. Similarly, a would-be murderer has less liberty if his target-victim escapes; just not as much as his target-victim preserves his liberty by escaping that intended murder. This seems to be a coherent account. However, it is not how people mainly think about interpersonal liberty—either as self-described libertarians or otherwise. People typically think that when someone escapes proactively-imposed slavery he gains liberty; but his previous master has lost only his power over him. And the would-be murderer does not have his liberty lessened if his target-victim escapes him; his target-victim's liberty is simply preserved. Thus the no-imposition view fails to capture the intuitions that people usually have (as a matter of fact: this is not to advocate anything here) that there is a real causal and also moral difference between withholding a benefit and proactively imposing a cost even when the outcomes are the same. Consider a well-known example in the philosophical literature: coming across a drowning child in a shallow pond. Not saving the child will usually be viewed as morally reprehensible and despicable, but it is not usually viewed as causally or morally

56. With the possibility of compensation in certain cases. Perhaps where there is no similar reciprocity, for instance.

57. A review asserts that "[1] The argument of [this section] seems to apply equally well to the author's argument, [2] for the author never shows that want satisfaction is a non-zero-sum game, [3] nor does the author make a convincing case that interpersonal liberty, as defined by rights or some other criteria, is actually zero sum." There appears to be confusion here. 1) This section shows how it is possible to *avoid* the zero-sum-game interpretation of 'Hobbesian' liberty "if the subjective intensities of interpersonal impositions are taken into account". 2) This essay's main theory is not about mere want-satisfaction but the absence of proactive constraints on want-satisfaction. 3) Interpersonal liberty as somehow "defined by rights" may very well not be zero-sum. But, for the reasons explained, that cannot be an abstract theory of liberty (which does indeed use "some other criteria").

equivalent to pushing a child into the pond so that he drowns: to the equivalent of murder.[58] Hence it is closer to the main libertarian, and also more popular, approach to view abstract interpersonal liberty as the absence of people's *proactively*-imposed constraints on our preference-satisfactions. And that fact possibly means that it is more stable and less costly to preserve. If so, other things being equal, more liberty should result. Thus that may be one important practical difference, after all.

Nevertheless, there are—as mentioned—some self-described "Hobbesian" libertarians (although they would probably not give the same account as here). And there are also anti-libertarians that take a Hobbesian approach to liberty. Therefore, it is useful to be able to explain both of these two approaches. It is also possible that one of these approaches is in some way logically incoherent or in some other way unfixably faulty. In which case, it is good to have the other to fall back on. But if they are *both* logically incoherent or unfixably faulty, then that would mean starting again. For it seems that there must be a *tacit*, non-propertarian, non-normative, abstract conception of interpersonal liberty that distinguishes between those rights, property rules, and activities that instantiate (or fit) liberty and those that do not. And so an *explicit* account of that conception should be possible.

8) Libertarian morals

An abstract theory of interpersonal liberty and of what it entails in practice has now been broadly explained. Orthodox libertarianism brings morals into the picture before this has been done. But it seems that only after this has been done can it be fully coherent to ask 'how does liberty and what it entails relate to morals?' Given—as seems to be the case—that there cannot be any supporting justifications, it can only be a bold conjecture that such abstract and practical libertarianism is morally preferable to any alternative. This conjecture needs to be defended in the light of any criticisms that arise. It can be explained and defended how there does not appear to be any significant clash between libertarianism and the most defensible versions of various morally desirable things: rights and duties, justice, social justice, a social contract, human flourishing, human welfare, etc. But this does not mean that libertarianism is thereby morally *supported* by any of these things (or any combination of them). It remains a separate conjecture that libertarianism is morally desirable, and all moral criticisms are potential refutations that require adequate responses.[59]

9) Concluding conjectures

This philosophical essay is, ineluctably, more than averagely broad and speculative. Consequently, even if it were not assuming critical rationalism, it is not being presented as completely clear and convincing. However, it would be remiss not to conclude with some bold[60] conjectures that ought to be eminently criticisable. As regards interpersonal liberty, the abstract theory captures and explains it. As regards libertarianism, a "paradigm shift"[61] is required. The fundamental philosophy involved with

58. Matters would be different if one were contractually employed as a lifeguard: then not saving the child would be proactively imposing by breaking one's contractual duties (on deriving contracts see Lester, *Escape from Leviathan*, 80-85).

59. A review suggests, without any explanation (or 'justification'), that this short section should be omitted. Perhaps the implied reason is that it is better to say nothing about libertarian morals rather than to fail to produce a scholarly length 'justification' of what is being explained here. But to say nothing may leave it mysterious to many readers how morals are supposed to relate to libertarianism with this theory. Or it may be thought that morals are still what will give it a 'supporting justification'. Or it may be supposed that morals are implied to be not needed.

60. A *JLS* review notes the Popperian approach to bold conjectures but suggests that "it does not follow from accepting this methodology that one must make bold and extravagant comments about the value of one's conjectures". However, no specific examples are quoted or explained to be "extravagant". And none of the comments ought to be read as intentionally "extravagant", although a sound criticism may reveal them to be so.

61. To put it in the terms used and popularised by Thomas Kuhn.

mainstream libertarianism is a refuted and "degenerating research programme".[62] The philosophy involved with this new paradigm is an unrefuted and highly fruitful one. It offers a clearer understanding, better and more comprehensive solutions to problems, and more convincing replies to criticisms. However, despite its radical and important differences, the new paradigm is not fundamentally ideologically at odds with libertarianism itself—although that is sometimes the mainstream perception. For it reaches more or less the same conclusions[63] but with greater philosophical clarity and cogency.

So far, this heterodox paradigm has been largely unnoticed or ignored. Where it has occasionally been subjected to criticism[64] it appears to have been misunderstood.[65] This is only to be expected. It is sufficiently radically different from the current orthodoxy to confuse most mainstream libertarians, even philosophers.[66] It is still 'axiomatic' to them that self-ownership, 'just' property, and some version of morality are somehow 'foundational' to explaining and 'justifying' libertarianism philosophically (and all without an explicit, abstract theory of liberty), despite the increasingly obvious problems with such assumptions. It will only slowly become clear that it is necessary to make the philosophical distinctions of abstract liberty, applied liberty, and moral defences, while using critical-rationalist epistemology.[67,68]

62. To put it in the terms used by Imre Lakatos. Referring to Popper, Kuhn, and Lakatos might seem to be epistemologically promiscuous and inconsistent. However, the different expressions seem to capture important phenomena. Also, Kuhn's approach can be interpreted as more sociological than epistemological. And Lakatos did not see his own work as contradicting Popper's basic epistemology.
63. It deals precisely with any exceptions in a principled way where mainstream libertarianism is either unable to answer or is forced to make ad hoc assumptions.
64. For instance, D. Gordon and R. A. Modugno, Book Reviews, *Journal of Libertarian Studies*, 17, 4 (2003): 101–109; D. Frederick, "A Critique of Lester's Account of Liberty," *Libertarian Papers*, 5, 1 (2013): 45-66; "Adversus Homo Economicus: Critique of Lester's Account of Instrumental Rationality" (https://www.academia.edu/2037838/Adversus_Homo_Economicus_Critique_of_Lester_s_Account_of_Instrumental_Rationality, 2015).
65. Replies to the critical texts listed in the previous footnote can be found here: Lester, *Explaining Libertarianism*, chaps. 9, 10; "Adversus 'Adversus Homo Economicus': Critique of the 'Critique of Lester's Account of Instrumental Rationality'" (https://philpapers.org/rec/LESAAH-2, 2017). Links to other replies to reviews: http://www.la-articles.org.uk/lwa.htm.
66. As illustrated by the review quoted throughout.
67. A review objects that this essay "has provided nowhere near the argument necessary" for its concluding conjectures. Of course, conjectures cannot be supported by arguments: only explained and defended. However, there have been short explanations of 1) the fundamental philosophical problems with mainstream libertarianism, and 2) how an alternative approach can solve those problems. The review has offered no sound criticism of any part of these explanations. Hence it "has provided nowhere near the argument necessary" as a criticism to refute the concluding conjectures.
68. This essay has benefitted from the critical input of Mark Brady and David McDonagh.