

Some Critical Comments on Long 2013: “Why Libertarians Believe There is Only One Right”

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

Abstract

This essay explains various significant errors, imprecisions, and omissions concerning libertarianism in Long 2013.¹ The “right not to be aggressed against” is not, as such, the libertarian right because the ‘right to liberty’ must be that right (although not being aggressed against can charitably be interpreted as equivalent). There are non-libertarian rights, but they don’t override the right to liberty. Unsupported assumptions are inevitable because justifications are impossible. Rights should not be “defined” but, rather, morally and metaphysically theorised – with criticism permanently invited. Moral and legal permissibility need to be clearly distinguished. The conceptions of “aggression” and “force” are normative and confused. It is possible to advocate the right to liberty on no grounds whatsoever and also to conjecture that liberty (deontologically) and welfare (consequentially) are systematically compatible in practice for theoretical and causal reasons. The rejection of positive rights is “privileging” and not “conceptual”. Libertarian property needs to be derived from an explicit, non-normative, theory of libertarian liberty. Long 2013’s overall account is “mysterious” and “one-sided”.

Introduction

The main criticisms of Long 2013 also apply to many other libertarian texts. They involve the use of the following three ideas:²

- 1) A non-moral, pre-property theory of interpersonal liberty as ‘the absence of proactively imposed costs’.
- 2) Critical-rationalist libertarianism.
- 3) Causal and conceptual compatibilism concerning liberty-deontology and welfare-consequentialism.

Comments

The main thesis of Long 2013 is stated thus:

Libertarians believe that there is, fundamentally, only one right: the right not to be aggressed against.

¹ Described as “draft” but, in effect, long-published online and not relevantly altered despite previous criticisms along the lines in this essay.

² As found, for instance, in Lester [2000] 2012.

Perhaps this is what, most, libertarians might say they believe. But something more like the ‘right to liberty’ has to be the fundamental *libertarian* right. Or why are they ‘libertarians’ rather than ‘anti-aggressionists’? But how is the ‘right to liberty’ best theorised? To be clearer, it is better to separate 1) a relevant theory of ‘liberty’, from 2) a relevant theory of a ‘right’. 1) One answer about libertarian liberty (and possibly the only explicit answer) is that it is the non-moral, pre-propertyarian ‘absence of proactively imposed costs’.³ Moreover, ‘aggression’ itself requires proper theorising, and presumably in some way that is relevantly compatible with libertarian liberty if it is not to clash with that liberty. Therefore, non-aggression presupposes some theory of libertarian liberty (whether implicit or explicit), albeit that the two things are intimately and even inextricably related. 2) One answer about rights is that these are whatever ought to be regarded as strong *prima facie* claims towards other people in the real world. But some such rights are best left as strong moral claims while others need to be enforceable. For instance, a family member or friend has only a moral right (outside of any explicit contract) to more assistance from us than a random person has. Or someone has a moral right to what we promised them, although there wasn’t even an implied contract. However, everyone ought to have an enforceable right to liberty (even when it flouts non-enforceable moral rights). Of course, one could stipulatively restrict the use of ‘rights’ to the enforceable sense (as Long 2013 does). But that would appear to be producing a persuasive definition that flouts the broader common usage for no real gain.

Long 2013 asserts that

The libertarian position comprises two distinct claims: first, we have a right not to be aggressed against (call this the Positive Thesis); second, we have no *other* rights (call this the Negative Thesis).

It might be clearer and more accurate to say the following. First, we only have an *enforceable* right to interpersonal liberty (but such liberty needs some theoretical explanation). The right to not be aggressed against is possibly an equivalent way of expressing this right (but this relationship also needs to be theoretically explained). Second, there are no other rights that enforceably override the right to liberty, although there are various other kinds of rights.

We are then told that

A crucial feature of libertarian political theorizing is the insistence that not just the precise nature, but the very *existence*, of political authority requires justification and cannot simply be assumed.

This is false because this is not the case with critical-rationalist libertarianism. If critical rationalism is the true epistemology, then justification is impossible and assumptions are inevitable – but criticisms and defences are possible and desirable. Critical rationalism can be explained very briefly as follows. All observations are theory-laden assumptions (we cannot perceive reality directly). All arguments rest on, and thereby amount to, assumptions (and all valid arguments are tautologies). Logically, we can never support or ‘justify’ assumptions because of an infinite regress (or circularity, or arbitrary stopping point). Assumptions cannot give epistemological support. Therefore, the only logical epistemological position is testing and criticism to try to detect false assumptions (but this process remains conjectural). To ask a critical rationalist to ‘justify’ his assertions is analogous with asking an atheist to name the ‘true religion’. A critical rationalist can sometimes usefully *explain* his assertions

³ See Lester 2011 and 2012.

(some of their implications and background, logical and empirical), but that explanation will itself make assumptions and be incomplete.

There is the suggestion that we can “start from the basic natural rights that human beings would have in *any* social context, *including a state of nature*”. However well tested and criticised it is, it can only remain a conjecture that the enforceable right to interpersonal liberty is desirable. An attempt to base that right on nature looks as though it might be some combination of the justificationist error and the genetic fallacy.⁴

The question is posed: “How, then, are rights to be defined...?” But philosophy should not be about how things are to be “defined”. This suggests that, 1) we are concerned about mere words (but words don’t matter much: “*Words are wise men’s counters, they do but reckon by them*”⁵), or 2) we are searching for some common usage (but that is unlikely to solve a real philosophical problem), or 3) we are producing a stipulative definition (but that means it isn’t refutable). Hence, it might be better to say that we are theorizing about what rights really are (metaphysics) or ought to be (morals).

We are offered the strange view that

the permissibility of *enforcing* a right does not entail the permissibility of *exercising* that right. I have the right to publish and distribute Nazi propaganda; it would not be permissible for me to exercise that right, but it would nevertheless be permissible for me, or my agent, to fend off by force anyone who proposed to suppress that right.

This use of “permissible” is confusing. If you have a right to do something, then exercising that right must be legally permissible (assuming the positive law does not flout that right) even if it is not morally permissible (according to some moral theories, at least). A clear distinction between moral rights and enforceable rights seems needed here. Or perhaps “permissible” is meant to refer merely to manners rather than morals.

We then come to an explanation that unwittingly advances a persuasive normative thesis as a conceptual factual thesis:

aggression and force are conceptually linked; aggression is initiatory force – or conversely, force is that mode of conduct which, if initiated unilaterally, counts as aggression.

An act of theft can charitably be interpreted as an aggression (in the sense of invasion or trespass) against the legitimate owner. But it need not involve any literal physical “force” (except in the irrelevant sense that physics uses the term). Also, a policeman might defensively initiate force against a thief who had himself used no force (by online fraud, for instance). Lacking an explicit and coherent theory of liberty, much libertarian literature (unwittingly) uses “force” and “coercion” in technical, eccentric, and persuasive senses that tacitly presuppose, and thereby cannot explicitly explain, interpersonal liberty.

The error is emphasised in a footnote:

³ It should be noted that “aggression,” as used here, is a descriptive concept, not a normative one

Therefore, the critical reply might need to be similarly emphasised. If we take “aggression is initiatory force” literally, then it is descriptive but inaccurate. If we take “aggression is initiatory force” to mean

⁴ The genetic fallacy is that something remains essentially what it originally was: e.g., a hen is really a kind of egg.

⁵ Hobbes, Thomas. 1651. *Leviathan*.

what some libertarian texts mean by “initiator force”, then it is tacitly normative by presupposing that only violating libertarian property rights (whatever they are) counts as “initiator force”.

That same footnote concedes that “the term ‘aggression’ has pejorative connotations” but asserts that this “derives from the recognition that what the term *describes* is *in fact* evil”. And so this adds – without explanation – the thesis that evil, or immorality, is factual or positive: a denial of the fact-value distinction.

Why do libertarians think there is a right to liberty or “a right not to be aggressed against”? We are told that “Some libertarians accept this thesis on primarily deontological grounds Other libertarians accept the thesis on primarily consequentialist grounds”. However, it ought to be added, critical-rationalist libertarianism accepts this thesis on no grounds whatsoever, simply holding it as an assumption or conjecture for criticism. Moreover, it is also possible to conjecture that human liberty and human welfare do not systematically clash because they are systematically complementary in a variety of conceptual and causal ways.

We are later told that “the ban on positive rights derives from conceptual constraints inherent in our negative obligations, not from any privileging of negative obligations over positive ones.” Is this true? Libertarianism means respecting liberty (or non-aggression) as an enforceable obligation. And if you assume such an obligation, then it logically follows that some other potential obligations are ruled out. However, it is conceivable, instead, to make respecting liberty a weak moral obligation and to make, say, promoting universal healthcare (or whatever) an enforceable obligation. Therefore, libertarianism is, in this way, exactly about “privileging” liberty as a “negative obligation”.⁶ Nevertheless, there is no sound criticism for not doing so. And all the alternatives do not withstand criticism.

How does “initiator force” relate to “property rights”?

we are committed to recognizing, as instances of initiator force, *some* forms of interference with one’s control over external resources, even if no bodily assault on one’s person is involved. But if such forms of interference constitute initiator force, then it must be permissible to interfere with *them*; hence it follows that we must also recognize some forms of interference that do *not* constitute initiator force. In short, we are committed to a system of property rights – that is, a set of principles determining when one may, and when one may not, interfere with a person’s control over some external resource.

What this passage in effect does is finally and simply to admit that the assumed conception of “initiator force” needs to presuppose “a system of property rights”. But that entails that the basic right is itself really “a system of property rights”. The basic right is not the “right not to be aggressed against” (and *every* “system of property rights” entails this), let alone the ‘right to liberty’. Consequently, this is, as it stands, propertarianism rather than libertarianism. And yet, undoubtedly, what is intended is “a system of property” that respects general libertarian intuitions. But there is no way to explain this philosophically without a proper theory of libertarian liberty.

Fortunately, there is one. It is a version of interpersonal ‘liberty’ in the general sense of not being interfered with by other people. Or, to elaborate, of being free from other people initiating constraints on us and our projects (therefore, effecting any proportional defence or restitution, ipso facto, does not *initiate* such constraints). This abstract sense of ‘liberty’ does not, and need not, mention or presuppose property or morals. Grasping the general meme is more important than the precise way to theorise it. However, for reasons of clarity and precision that will not be discussed here, one theory is the ‘absence of proactively imposed costs’ (which, crucially, entails the practical ‘libertarian policy’

⁶ There is no literal privilege, of course, as no one has liberty at the expense of another person.

of ‘minimising proactively imposed costs’ when there is a clash). This view of liberty can be applied to derive self-ownership and external property in a non-normative way. If we avoid a host of philosophical issues, then this can be briefly outlined as follows.⁷

In the first instance, in practice it does not (significantly) proactively impose on other people to take control of one’s own body, and it does (greatly) proactively impose to take control of other people’s bodies. Hence each person’s control of his own body follows if there is maximal liberty. And having secure control of one’s own body is de facto self-ownership (asserting that this is moral or lawful in practice are entirely separate matters). After that, it minimises proactive impositions for people to be allowed control-by-use of external resources (and thereafter control-by-trade). And that secure control is also de facto ownership. If people were not secure self-owners or could not have such secure ownership-by-use (and later by trade), then they could be objectively proactively imposed on by other people to a high degree: efficient economizing, and even personal safety, would not exist. One way of understanding all this is that libertarian liberty tends to “internalize externalities” (as economics calls this, but here used in a pre-propertyarian sense). And that also, incidentally, helps to explain why liberty is so productive: efficient economizing is possible and the “tragedy of the commons” is avoided. Thus such theorised liberty can be seen in practice to entail self-ownership and external property. There is no need to fall into the error of muddled, moralised, and propertyised persuasive definitions; an error that many critical texts rightly perceive in libertarian texts but wrongly cite as an inherent flaw in libertarianism.

At least perceiving that relevant property rights are required, Long 2013’s only suggestion is this:

Libertarian property rights are, famously, governed by principles of justice in initial appropriation (mixing one’s labour with previously unowned resources), justice in transfer (mutual consent), and justice in rectification (say, restitution plus damages).

This realises that only “libertarian property rights” can do what is needed. Unfortunately, none of the cited principles is connected to liberty, as such, in any way that is explained. Moreover, these principles are conflating the moral issue of “justice” with what is libertarian as a matter of contingent fact (whether just or not). However, as has just been explained in outline, it is possible to derive what libertarian property objectively is under assumed realistic circumstances.

In concluding, Long 2013 makes a “claim to have shown only the following” three things (with replies added immediately below each one):

1. Whether or not the Positive Thesis, that we have a right not to be aggressed against, is true, there is certainly nothing mysterious or one-sided about finding such a thesis plausible and attractive.

The account of ‘aggression’ as “initiator force” is “mysterious”. Libertarian texts usually have a good tacit understanding of liberty/non-aggression but a poor explicit theory. Philosophical texts lack a good excuse – especially when they are ignoring what has been explained in criticism of them.

2. *Given* the Positive Thesis ... the Negative Thesis, that we have no rights *other th[a]n* the right not to be aggressed against, necessarily follows, and so there is nothing mysterious or one-sided in embracing *it*.

⁷ Myriad details are discussed in Lester 2012.

As the “Positive Thesis” is “mysterious” about “aggression” and “one-sided” about “privileging” non-aggression, that transitively makes the implied “Negative Thesis” also “mysterious” and “one-sided”. In any case, there are non-enforceable rights.

3. *Given* the Positive and Negative Theses, the libertarian view of property rights is more defensible than the welfare-statist view, and so there is nothing mysterious or one-sided about preferring the former to the latter.

As they stand in Long 2013, there is no philosophical connection between “the Positive and Negative Theses” and “the libertarian view of property rights”. So that is one reason that it is “mysterious” and “one-sided” to prefer “the libertarian view of property rights” to “the welfare-statist view”. Moreover, if the libertarian view of property rights were to lead to general deprivation and misery while the welfare-statist view were to lead to general flourishing and happiness, then it would also be “mysterious” and “one-sided” to prefer “the former to the latter”. And that is what welfare-statists do assume; hence they do find it “mysterious” and “one-sided”.

Conclusion

The general philosophical approach to libertarianism taken in Long 2013 is not at all unusual among libertarian texts. And the general perception of the problems with that approach is not at all unusual among critical texts. To the extent that the delusion of clear argumentative superiority clashes with the accurate perception of argumentative confusion, this makes libertarianism appear illogical and cultish. As a consequence, libertarianism is being held back. But, as we have seen, this is unnecessary. The philosophical criticisms can be clearly and cogently answered.

Bibliography

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