

## A Critical Commentary on the Zwolinski 2013 “Libertarianism and Liberty” Essays

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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

*The Zwolinski 2013 “libertarianism and liberty” essays on libertarianism.org are argued to have the following problems: taking libertarianism to be a “commitment” to the view that “liberty is the highest political value”; examining and rejecting the maximization of liberty without a libertarian theory of liberty; accepting a persuasive sense of “coercion”; misunderstanding liberty in the work place; conflating, to varying degrees, freedom of action and freedom from aggression and justice/rights/morals; focusing on logically possible clashes instead of practically possible congruence among utility, liberty, and justice – in particular, that “rule (preference-)utilitarianism” fits “rule libertarianism”; failing to distinguish liberty from license (and power) concerning slavery, and so-called “civil and democratic liberties” (and everything else); the idea that any coherent reference to a quantity of liberty requires precise cardinality; failing to see that the quantity of liberty has an inherently qualitative aspect; misunderstanding property as about limiting freedom; mistaking clashing Hobbesian freedom for non-clashing Lockean liberty; adopting G. A. Cohen’s confusion about freedom as the libertarian conception of freedom; assuming the – illogical – epistemology of “justification”; not realizing that both allowing and prohibiting pollution “aggresses” and so “aggressions” need to be minimized; the failure of all six of its reasons for rejecting the non-aggression principle.*

### Introductory Remarks

This is a critical commentary on the Zwolinski 2013 “Liberty and Property” essays on libertarianism.org. It is expositionally very useful that the degree of philosophical error and confusion evinced in these essays is extremely high but not of any unusual kind. Responses are kept short and avoid repetition except where it seems useful for clarity or emphasis. Points of agreement, or insignificant disagreement, are ignored. Zwolinski 2013’s quoted titles are kept for each section throughout.

### “Libertarianism and Liberty, Part 1: A Complicated Relationship”<sup>1</sup>

Although later going on to reject it, the essay first suggests, “what else could define a commitment to “libertarianism” other than a belief in *liberty*? ... what sets libertarians apart is their belief that liberty is the *highest* political value.” There are several immediate problems – overlooked in the essay – with the idea of having a “commitment” to the view that “liberty is the *highest* political value”. 1) We cannot be committed to any view. We don’t decide what we believe is true or moral: introspection reveals our beliefs. And so a perceived refutation can stop us holding a view at any time. 2) Strictly,

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<sup>1</sup> <http://www.libertarianism.org/blog/libertarianism-liberty-part-1-complicated-relationship>

though possibly pedantically, liberty is not a “value” (values only exist in people’s minds), but a concept or state of affairs that might or might not be valued. 3) Libertarianism is, in one sense, not “political” but anti-political in principle (at most, a minimal state is a necessary evil). 4) Libertarianism is not necessarily even the “highest” principle. A libertarian principle might be held to be inviolable. But even that does not entail that it is the “highest” principle. If it is held for *modus vivendi* reasons, for instance (as it usually is to some degree, at least), then all participants might have other principles that they would personally rank higher, or value more, than the libertarian principle. However, they realize that liberty is a safer way to promote those other principles than the use of aggression (i.e., flouting interpersonal liberty).

The essay’s interpretations then begin: “let’s look at one popular and superficially plausible interpretation. What it means to hold liberty as the highest political value, on this view, is to hold that liberty ought to be *maximized*.” Before jumping into issues of maximization, should we not first ask, ‘what is the best theory of libertarian liberty?’ Otherwise, whether or how it can or should be maximized cannot be answered. One theory of social or interpersonal libertarian liberty is a non-moral and pre-propertyarian ‘absence of proactive impositions’ (on people by people). That is, ‘proactive impositions by other people’ are the relevant aggressive constraints that fit what libertarianism requires to be avoided. Consequently, where an absence is not fully possible – as is often the case – then a minimization will be the most libertarian option. From this formula it is possible to derive self-ownership itself and all libertarian property, as well as solving various known paradoxes and newly arising problems. But we cannot go into detailed explanations here.<sup>2</sup>

It continues, “I am unable to think of a single libertarian philosopher who defends a position like the one I am describing.” Lester [2000] 2012 argues that libertarianism entails maximizing liberty: why would a libertarian accept less liberty if more were possible? However, it also defends a version of ‘rule libertarianism’ (rather than ‘act libertarianism’): as a general rule, don’t violate liberty even where it looks as though greater liberty can thereby be achieved – because it won’t work in the long run.

On concerns about “freedom of employees,” we are told of “the myriad ways in which coercion infests our present system.” There is considerable confusion about “coercion” among libertarians. Many of them use ‘coercion’ as meaning only whatever is unlibertarian. However, libertarians cannot be against ‘coercion’ as such in its plain English sense: roughly, interpersonal force and the threat of force. They can only be against coercion that violates liberty. They cannot be against coercion that enforces liberty or is voluntarily or contractually accepted. And libertarians must also be against plainly non-coercive acts that violate liberty, such as fraud and most theft (some theft also involves coercion).

The “coercion” is stated to be “often to the benefit of employers and to the detriment of laborers.” Yes, the state interferes and confuses matters. But the crucial point must be distinguished and not lost: insofar as the state does not impose rules that flout liberty then the “standard libertarian response ... whatever restrictions employers impose upon their employees do not actually count as a violation of their freedom in the relevant sense” is correct. And that cuts both ways: whatever restrictions employees impose upon their employers do not actually count as a violation of their freedom in the relevant sense. Of course, it would clarify matters to have an explicit libertarian theory of liberty or freedom to apply here, and Zwolinski 2013 does not have one.

That absence helps to cause confusion like this:

Suppose I ask you to lock me up in your dungeon and throw away the key, perhaps in exchange for your writing a check to my child who I would otherwise be unable to support.

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<sup>2</sup> See Lester 2012.

However unimpeachable the contract may be on procedural terms, I am, once locked away in your dungeon, less free than I was when I was, well, free. Libertarians might be right in thinking that there is nothing morally *wrong* with the lack of freedom I now endure. But to infer from this that it must not be a lack of freedom after all is an abuse of language and logic.

This is a mistake that no libertarian text ought to make. The sense of ‘liberty’ or ‘freedom’ as the absence of mere physical constraint is completely different from the libertarian sense of not being aggressively constrained (proactively imposed on) by another person or an organisation (such as the state). Once voluntarily incarcerated, someone lacks physical freedom or liberty but he has suffered no loss of interpersonal libertarian freedom or liberty. There is no “abuse of language and logic” in making this clear distinction. The abuse is in conflating two conceptually distinct homonyms.

This error is compounded by the interpretation that the “fundamental problem with this line of argument is its reliance on what philosophers call a ‘moralized’ conception of liberty.” Some libertarians are indeed confused in just this way. But there is no need to mention morals at all. Libertarian liberty has an objective content both theoretically and in its observance. It is an entirely separate matter whether such liberty or its observance is moral.

Of criminals we are similarly told, “punishing them by imprisonment might not be unjust. But, surely, this does not mean that the criminal is, all appearances to the contrary notwithstanding, perfectly free.” The criminal’s physical liberty has been reduced. But his libertarian liberty has not been infringed to the extent that the judicial system was only engaged in *reactively* or *defensively* rectifying his infringements of the libertarian liberty of others. That ought not to appear paradoxical or unclear.

The problem, according to the essay, is that “Freedom and Justice are both important values ... But we should resist the temptation to suppose that they are the *same* value.” In fact, libertarian liberty, and freedom of action, and justice are *three* distinguishable *concepts* and *states of affairs*. However, if the libertarian compatibility thesis is true (see footnote 13), then liberty will systematically be compatible with justice and human welfare in their practical applications.

### **“Libertarianism and Liberty, Part 2: Against Maximum Freedom”<sup>3</sup>**

We are first told that it is because “the treatment of fate of any particular individual is of no decisive relevance for the utilitarian ... philosophers ... objected that utilitarianism fails to take seriously the separateness of persons.” This failure is true in theory, but not in practice. Analogously, libertarianism fails to take seriously the suffering of persons – in theory, but not in practice. For the most part, the classical liberals (a broader church than – anarchist and minarchist – libertarians) did not see a clash between liberty and utility. And they were right. (Although preference-utilitarianism, as famously championed by R. M. Hare, is the best version: we often want real states of affairs as ends-in-themselves and would not want happy delusions or pleasurable mental states instead.) We are then told that the “view that justice consists in maximizing liberty is subject to precisely the same objection ... the sacrifice of some persons’ freedom for the benefit of others, so long as the net result is positive.” But if “rule libertarianism” is true, then the problem is not a practical one for libertarianism. And libertarianism can be advanced as a practical ideology, not one for all logically possible worlds.

However, according to the essay, when dealing with “potentially dangerous individuals” then,

On the maximizing view, there is no principled objection to imprisoning an innocent person *X* merely on the grounds that *X* is deemed likely to commit some offense in the future.

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<sup>3</sup> <http://www.libertarianism.org/blog/libertarianism-liberty-part-2-against-maximum-freedom>

If person X is known to be a significant and serious danger to others (perhaps by past crimes, or how could we know?), then such a person proactively imposes on us even if he enters our private streets without our permission. So we could at the very least exclude him from these in self-defence. And if he is a serious-enough danger, then incarceration is theoretically possible in self-defence: the preventive detention would proactively impose on X, but less than his being a serious danger at large would in itself (merely as a real and serious risk) proactively impose on potential victims. Therefore, there is no real problem posed here.

The essay accepts that a “defender of the maximizing view might argue that such trade-offs are unlikely to be beneficial in the real world” but objects that “it is precisely the same response that a utilitarian might make to the charges of injustice we have leveled against his theory.” And yet the utilitarian’s response is in practice adequate if he is a rule-preference-utilitarian who embraces rule-libertarianism as the right rule to that end. It is weak argument to attack merely logically possible faults, but that is what philosophers often do with both libertarianism and utilitarianism.

The essay concludes that “Libertarianism does not hold that people are morally free to do *all* that they will. The freedom of all individuals is sharply curtailed by the rights of others.” But this, again, conflates libertarian liberty with freedom of action. It also conflates what libertarian liberty is with whether or not that liberty is a right or is just.

### “Libertarianism and Liberty, Part 3: It Doesn’t Add Up”<sup>4</sup>

There is more great confusion about libertarianism in the assertion that “Abolition did, of course, increase the freedom of slaves. But it also *diminished* the freedom of certain non-slaves. Specifically, it diminished the freedom of slave-owners.” It diminished the license (the aggressive constraints or proactive impositions) of the slave-holders. License is the opposite of (libertarian) liberty. To free a slave is not to take any libertarian liberty from his slave-owner. The essay is in a hole about slave-owners but digging continues: “Before abolition, the law allowed them to do certain things. After abolition, it didn’t. Their freedom had been reduced.” The slave-owners’ power to restrict the liberty of others (i.e., to proactively impose on those others) had been reduced; they had not thereby themselves been proactively or aggressively imposed on. It is ‘explained’ that “Freedom is one thing; justice is another.” The correct response to this is that freedom from any constraint whatsoever is one thing; freedom from interpersonal aggression (libertarian liberty) is another; justice is a third.

We are then asked, “What is the ‘unit’ of freedom on which our operations of addition and subtraction are to be performed?” To answer this we are told to “consider the following example from the philosopher Will Kymlicka’s critique of libertarianism.”<sup>5</sup> First, “Suppose we want to compare the freedom of people in London with that of people in pre-1989 communist Albania. People in London have freedoms like the right to vote.” Political voting is not a freedom but an attempt to oppress others in a majoritarian way. And “the right to practice their religion, and other civil and democratic liberties” is also dubious as many so-called “civil and democratic liberties” are licenses posing as liberties. The essay concludes that “Albania’s lack of traffic regulations does not compensate for its lack of basic civil liberties. ... But the question is: can we *account* for this judgment simply in terms of a *quantitative judgment* about the amount of freedom in Albania as compared to London?” Yes we can, but it’s a rough and ready quantity rather than a precise unit. One can often see that one object is bigger, or further away, etc., than another without being able to give any exact figures. And one can often do the same with liberty. (One test of ordinal liberty in the current case, incidentally, is the

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<sup>4</sup> <http://www.libertarianism.org/blog/libertarianism-liberty-part-3-it-doesnt-add>

<sup>5</sup> A lengthy reply to this cited “critique of libertarianism” can be found in Chapter 2.

direction of migration – if it is allowed at all. People tend to move from areas of greater oppression to those of lesser oppression.) The essay asks, “How would such a quantitative judgment be made?” And the answer is by starting with a libertarian theory of liberty instead of confusing it with freedom from any constraints. The questions continue: “Should we count up the individual, particular action-tokens ... Or should we be counting ... more general action-*types* ...? And ... just how are we supposed to individuate actions in order to add them up?” Muddles about “liberty” aside, comparison of size simply does not entail that precise quantification is required. It is obvious that the Albanians had even less libertarian liberty than we had, without assigning numbers to the differences.

The essay then changes tack and asks, “Why believe that all that matters in assessing the freedom of a country is the numerical *quantity* of freedom allowed, and not the substantive *quality* of that freedom?” And the error here is in failing to understand that the amount of the lack of freedom relates to the extent that some infringement matters to the victim. There is no full distinction between quantity and quality. Pushing a passing person into a pond is a lesser infringement of their liberty than raping them if that person finds the latter to be worse.

It is very odd to conclude that “Libertarians are right to believe that freedom matters” when no coherent theory of libertarian liberty has been presented. And it is a further confusion to assert that “Morally, a commitment to maximizing freedom is inconsistent with libertarianism’s proper concern for individual rights.” Libertarianism is, ipso facto, primarily about protecting liberty. And, therefore, *ceteris paribus*, more liberty is better than less. Individual rights are both a separate and, at most, a subsidiary matter.

### “Liberty and Property”<sup>6</sup>

It is stated that “imposing limits on others’ freedom is part of the *point* of private property.” This, again, simply fails to distinguish undifferentiated constraints on people from ‘aggressive’ or proactive constraints. The libertarian “*point* of private property” is that it minimizes ‘aggressive’ or proactive constraints (this will be considerably clarified in the commentary on the final essay).

The essay accepts Hobbes’s conception of freedom and concludes that “Peace, prosperity, and stability are only achieved when each individual agrees to lay down some of this unlimited liberty and to respect the rights of others.” Hobbesian freedom is about having unconstrained action, and it clashes with similar freedom among people. By contrast, Lockean liberty is the absence of aggressive constraints, and it does not clash with similar liberty among people.<sup>7</sup> They are completely different things. Limiting Hobbesian freedom of action that is also license (proactively or aggressively imposing on others) is not limiting Lockean (libertarian) liberty.

The non-libertarian analysis continues with the view that

if all land is privately owned, and all landowners have a right to say “No” to all non-landowners, then non-landowners are not equally free with landowners. They exist in a state of dependence. Like feudal serfs or the most abject slaves, they live only by the consent of those in command.

However, this consequence is easily avoided by understanding and applying the correct pre-propertyarian libertarian theory of liberty. For to the extent that private property in land begins to proactively impose on non-landowners it is thereby not libertarian. This, of course, is largely a

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<sup>6</sup> <http://www.libertarianism.org/blog/liberty-property>

<sup>7</sup> Strictly, Locke is not consistent on this type of liberty; so this is an idealised version of Locke.

theoretical possibility in the real world, but any putative empirical cases can in principle be dealt with in an entirely libertarian way.

The essay then advocates G. A. Cohen's view of freedom, that "the poor ... lack precisely the kind of negative freedom that libertarians purport to be concerned with – freedom from liability to physical interference by other human beings." This is mistaken. That is not the kind of freedom that clear-thinking libertarians are concerned with. Libertarians are concerned with something more like 'people not being *aggressively* constrained by other people' (however, 'the absence of proactive impositions' has more clarity and precision for reasons that cannot briefly be rehearsed here). And merely protecting one's non-aggressively-acquired-and-held property (such as from would-be free riders) is precisely not aggressively to impose on the liberty of others.

### **"More on Property, Freedom, and Coercion"**<sup>8</sup>

The next essay asks, "Why do I say that property rights limit freedom? I start with the belief that to be free is to not be subject to interference by other people." From a libertarian viewpoint, it would be clearer to say that "to be free is not to be subject to *aggressive* interference by other people." And then we need an abstract theory of such "aggressive interference" from which property is derivable.

Instead we are told that

property rights are, at their core, socially and legally enforceable licenses to interfere with others. If I have a property right in a piece of land, I get to physically interfere with anybody who tries to use that land without my consent, or call on the police to do my interfering for me. So my having a property right in the land limits your freedom to use it.

On the contrary, it would be more accurate to say that "property rights are, at their core, socially and legally enforceable *claims to stop others interfering with us*. If I have a property right in a piece of land, I get to physically *defend myself from* anybody who tries to use that land without my consent, or call on the police to do my *defence* for me. So my having a property right in the land limits something more like your *Hobbesian* freedom-of-action to use it *and not your Lockean freedom-from-aggressive-interference*." Of course, all this is clearer with a proper theory of libertarian liberty. And then we can see how property is objectively derivable from observing liberty.

### **"Against Moralized Freedom"**<sup>9</sup>

We are invited to reconsider the view that "it is only interference that violates its target's moral rights that counts as a genuine infringement of freedom." And this view is then rejected 1) because it "conflicts with at least a significant part of our ordinary usage of the term," or 2) because of "circularity": "We have the rights we have because they protect freedom, and freedom is the liberty to do the things we have a right to do", or 3) due to "divorcing ... rights from concerns about liberty-as-noninterference altogether. What is really fundamental to libertarianism ... is not liberty but *property*." The first point was dealt with above. The second two points have some cogency, but they are not the underlying problem here. The real problem is that it greatly confuses matters to conflate 1) an objective theory of libertarian liberty as the absence of interpersonal *aggressive* constraints (however that might be formulated) with 2) whether there is a moral right to such liberty. Admittedly, it is a common confusion among libertarians. However, it is a far worse confusion to view libertarian liberty as mere interpersonal freedom of action, as Zwolinski 2013 does.

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<sup>8</sup> <http://www.libertarianism.org/blog/more-property-freedom-coercion>

<sup>9</sup> <http://www.libertarianism.org/blog/against-moralized-freedom>

## “Locke and Nozick on the Justification of Property”<sup>10</sup>

Despite the title, we can put Locke and Nozick aside – along with Zwolinski 2013’s comments on them. For the very idea that there can be a “*justification* of property”, or liberty, or anything else, is a fundamental error and one that holds back libertarianism. If critical rationalism is true, then the “justification” of any view is an epistemological impossibility. And failing to understand this is a third main serious problem for most of the libertarian literature (along with not having an explicit, objective, pre-property theory of libertarian liberty, and not fully appreciating how human liberty and welfare are systematically connected both conceptually and causally). This view is probably even more controversial and complicated than anything written above. Therefore, the most relevant philosophical response to this essay is briefly outlining both critical rationalism and how it applies to libertarianism.

No theory (or thesis, view, outlook, opinion, argument, proof, etc.) can ever rule out the possibility of a refuting counter-instance or counter-argument. With our finite and fallible reasoning facing the infinite worlds of unknown matter and theories, we never know what we might have overlooked. Therefore, theories cannot be justified (or supported, grounded, founded, based, backed, established, proven, etc.). All theories remain conjectures (or guesses, assumptions, suppositions, and so forth). We are obliged to use some conjectures for practical purposes; and not always unrefuted conjectures.<sup>11</sup> But the only thing we can do with conjectures epistemologically is to criticize or test them as best we can. If we cannot refute them, then they remain conjectures (but they might well be true, of course<sup>12</sup>). If we can refute them, then we learn something new.

However, refutations are themselves conjectural. So no refutation is ever justified either. Fortunately, there is a crucial asymmetry between a justification and a refutation. A conjectural refutation is coherent. It makes sense to say, *if* this observed phenomenon is a black swan, *then* “all swans are white” is refuted. Or *if* this proof is a correctly derived inconsistency, *then* the theory from which it is derived is false. By contrast, a conjectural justification is incoherent. We could not observe all swans (everywhere and everywhen) being white. Nor could we ‘prove’ the assumptions of an allegedly justifying argument without having an infinite regress, or circularity, or an arbitrary stopping point. It is also worth mentioning that much that is very commonly mistaken for ‘justification’ is actually explanation (e.g., ‘Markets allocate resources efficiently by people bidding for them in proportion to their profitability, whether monetary or psychic’). Such explanations may often be true or useful. But they are themselves conjectures and usually incomplete.

How does this apply to libertarianism? It is a conjecture that it is desirable to allow universal interpersonal liberty. Libertarians think that this conjecture is not refuted by any criticisms. All we can do is try to defend it by answering the best criticisms that we can find – and those of critics of libertarianism (occasionally these overlap). What about rights? One *might* conjecture that rights to liberty are the best rights, and then consider criticisms. What about utility (or welfare)? One *might* conjecture that liberty is the main cause of promoting utility (in terms of the satisfaction of spontaneous preferences, in particular), and then consider criticisms.<sup>13</sup> It is only “might” because

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<sup>10</sup> <http://www.libertarianism.org/blog/locke-nozick-justification-property>

<sup>11</sup> Newtonian mechanics are refuted but often useful approximations for practical purposes. The conjecture that people can fly by the power of thought alone, by contrast, appears to be refuted and not worth trying in any dangerous context.

<sup>12</sup> And either a theory or its negation must be true (assuming the logical law, or principle, of excluded middle).

<sup>13</sup> This is called the “classical liberal compatibility thesis” in Lester 2012. David Goldstone points out (private communication) that the “compatibility” of liberty and welfare makes it sound like an unexplained coincidence, when libertarians usually believe that liberty is a major explicable and testable cause of welfare promotion. That

neither of these views can support the universal theory of libertarianism and because a defender of libertarianism might offer different answers concerning rights, or utility, or whatever some specific criticism is about. The point is to attempt the possible: to refute the particular potential refutation somehow (e.g., “Genetic tests indicate that this alleged black swan is really a new species of goose”). It is not to attempt the impossible: to establish the universal conjecture (e.g., “Genetic tests show that every swan – everywhere and everywhen – is white”).

Of course, none of the above is intended to be a justification of critical rationalism and its application to libertarianism. It is, rather, a conjectured explanation.

### “Libertarianism and Pollution”<sup>14</sup>

We are first told that “Libertarians generally believe that aggression against innocent persons is morally wrong, and that the only just use of violence is to *prevent* aggression by others.” Somewhat less imprecisely, we might say that the only just use of *coercion* (using force and the threat of force against people) is to prevent *or redress* aggression. The essay then says, “In this respect, at least, the liberal egalitarian philosopher John Rawls was on precisely the same page as his libertarian colleague, Robert Nozick” and quotes Rawls on “freedom” purportedly to that effect. However, Rawls has an understanding of “freedom” that is inherently political and which sanctions much that libertarians would rightly see as itself involving aggression. Consequently, Rawls and Nozick are far from being “on precisely the same page.”

We are soon asked, “Suppose I aggress against you not by beating you over the head with a club, but by blowing tobacco smoke into your face? The smoke-blowing, just like the clubbing, is a physical invasion of your body. And it is a *harmful* invasion.” And here we should note that the physical harm itself is irrelevant to liberty. What matters is that the victim disvalues the invasion for whatever reason. If an aggression were to improve the victim’s health, then it would still flout his liberty.

After such considerations, we reach the conclusion that “The consistent application of Rothbard’s absolutist principle of non-aggression thus seems to require a prohibition on all forms of non-consensual pollution.” And in its absolutist form this is true. However, this conclusion overlooks something crucially important: it cuts both ways. The enforcement of the prohibition would itself aggress against the people whose activities would produce the pollution (e.g., having fires for needed warmth and cooking). So such prohibitions cannot be allowed either. We have reached not one but two unacceptable conclusions and, more to the point, they amount to an inconsistency in the “absolutist” version of the theory. Hence that form of the theory is a priori refuted. (Some Rothbardians try to introduce various assumptions to solve such problems, but they are ad hoc and invalid.<sup>15</sup>)

There are two main problems with the absolutist theory that lead to this result. First, while liberty itself can be interpreted as the absence of aggression, the libertarian policy must be to minimize aggression when there is such a clash as that described. Thus some sort of compromise is required, maybe with some damages being paid in one or the other direction. Second, “aggression” understood in terms of violating property rights is only a rule of thumb. “Aggression” can be more abstractly and accurately theorized as proactively imposing costs (such as both pollution and pollution prohibitions) on other people. This pre-property theory is required for consistently solving such property problems, paradoxes, and inconsistencies whenever they occur. This alternative approach should

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is partly true. In that case, “classical liberal causality thesis” would possibly be clearer. However, some of the overlap is for important a priori rather than causal reasons, and only “compatibility” seems to cover both.

<sup>14</sup> <http://www.libertarianism.org/blog/libertarianism-pollution>

<sup>15</sup> See, for instance, the Chapter 8 comments on Block 2011.



become clearer and more cogent in the replies to the next essay, which attempts to refute the “non-aggression principle” beyond any salvation.

### “Six Reasons Libertarians Should Reject the Non-Aggression Principle”<sup>16</sup>

The essay begins that “Many libertarians believe that the whole of their political philosophy can be summed up in a single, simple principle ... the ‘non-aggression principle’ or ‘non-aggression axiom’ (hereafter ‘NAP’) ....” And this is what it intends to refute. By contrast, this reply will defend one version of the NAP. For there is no inherent confusion in using the NAP as a shorthand reference to how people ought to behave and what is necessary and sufficient for interpersonal liberty fully to exist. However, in the event of a clash of liberties (e.g., I need to have a fire but you would suffer from my smoke) there is need to resort to the minimization of aggression principle (hereafter ‘MAP’). And it seems reasonable to interpret the MAP as an attempt to apply the NAP as far as is possible. Therefore, the MAP is better viewed as the practical policy that is implied by the NAP rather than as a separate and additional principle. This should become clearer as we proceed.

The essay continues that the NAP “holds that aggression against the person or property of others is always wrong....” Except that, as we have seen, very often two parties cannot help impinging on the liberties of each other (for instance, whether pollution is allowed or prohibited: one side or the other side must suffer an interference/constraint/cost). And in such cases “aggression” may not seem to be exactly the right word, although it will do. And what is inevitable is not obviously “wrong.” We are then also told that “aggression is defined narrowly in terms of the use or threat of physical violence.” It is clearer and less imprecise to say that “aggression” is proactively interfering with another’s person or property (when these are not themselves the result of any proactive interference).

Is it true of the NAP that “From this principle, many libertarians believe, the rest of libertarianism can be deduced as a matter of mere logic”? At least some libertarians appear to have supplementary or additional principles.<sup>17</sup> However, the view taken here is that only a pre-propertyarian conception of libertarian liberty can fully allow that “the rest of libertarianism can be deduced as a matter of mere logic.” But that is, indeed, a single principle and one that will be explained and defended.

As an implicit criticism, the essay observes that “The libertarian armed with the NAP has little need for the close study of history, sociology, or empirical economics.” However, that is surely a great virtue in a practical principle for everyone. Moreover, this appears to overlook that, because study is bound to be finite, no study can support a universal theory such as the NAP – although it can test it and possibly refute it. The essay continues that “With a little logic and a lot of faith in this basic axiom of morality, virtually any political problem can be neatly solved from the armchair.” And such simplicity is clearly highly desirable. Strictly speaking, no faith is required or possible: we do not choose what to believe. However, any – necessarily conjectural – solutions can be derived. And they are then ready for criticism and testing.

What is the philosophical significance of the fact that “On its face, the NAP’s prohibition of aggression falls nicely in line with common sense”? Common sense is a fallacious criterion of truth or morality. So it is similarly irrelevant to say that “it is far from common sense to think that its badness is *absolute*.” But it is relevant to present “any other possible consideration of justice or political morality” as a criticism of the NAP conjecture. It might seem that “There is a vast difference between a strong but defeasible *presumption* against the justice of aggression, and an absolute, universal prohibition.” But in practice our, necessarily conjectural, theories are always open to potentially refuting criticism no matter how “absolute” we might think them to be. The essay approves of Brian

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<sup>16</sup> <http://www.libertarianism.org/blog/six-reasons-libertarians-should-reject-non-aggression-principle>

<sup>17</sup> Again, see the Chapter 8 comments on Block 2011.

Caplan's view that "if you can't think of counterexamples to the latter, you're not trying hard enough." But counterexamples that are merely logical possibilities and unlikely scenarios are beside the point. And real systematic refutations of the practical morality of the NAP/MAP do not appear to exist.

We then move on to the offered "six reasons why libertarians should reject the NAP." And we ought to note immediately that to refute one, dubious, interpretation of the NAP is not to refute every interpretation of it. And only one sound interpretation of the NAP is required.

### **"1. Prohibits All Pollution"**

This section asserts that "industrial pollution violates the NAP and must therefore be prohibited" moreover, even "personal pollution produced by driving, burning wood in one's fireplace, smoking, etc., runs afoul of NAP." As has already been explained, prohibiting pollution (for instance, coercively preventing someone from lighting his fire for needed warmth and cooking) also violates the absolute NAP. Hence the MAP comes into play.

### **"2. Prohibits Small Harms for Large Benefits"**

We are asked to "suppose, to borrow a thought from Hume, that I could prevent the destruction of the whole world by lightly scratching your finger?" And here the practical libertarian can reply that the NAP is about the real world rather than about every logically possible world and thought experiment. The essay goes on to "suppose that by imposing a very, very small tax on billionaires, I could provide life-saving vaccination for tens of thousands of desperately poor children." This is slightly less implausible but it is still not realistic. Taxation is not needed to develop new vaccines. And the institution of any taxation would disrupt productivity immediately and then do cumulative damage as the economy has its growth slowed. Moreover, that growth would probably have included new advances in vaccines sooner or later. This section concludes by asking "is it really so obvious that the relatively minor aggression involved in these examples is wrong, *given* the tremendous benefit it produces?" And the "obvious" answer appears to be that implausible assumptions do not refute a practical principle.

### **"3. All-or-Nothing Attitude toward Risk"**

The question posed is, "what if I merely run the *risk* of shooting you by putting one bullet in a six-shot revolver, spinning the cylinder, aiming it at your head, and squeezing the trigger?" And the right answer is that it is an aggressive act to take such a serious risk at someone else's expense. In monetary terms, the degree of the aggression is something like the amount of money that the victim would have to be paid to accept such a risk (this is not to imply that everything can be reduced to money, of course). Without such an agreement, you are using someone else's property – his head – without his permission for your dangerous game. Imposed risks are already aggressions; actual damage is not necessary. Otherwise, by analogy, one may as well say that coercing someone to do something at gunpoint only becomes an aggression if you actually shoot them when they fail to comply.

The essay observes that "almost everything we do imposes some risk of harm on innocent persons" and that "Most of us think that some of these risks are justifiable, while others are not" but our reasonable explanations "carry zero weight in the NAP's absolute prohibition on aggression." And, again, this overlooks that there is aggression whether such risks are allowed or prohibited. But there is no insuperable problem with applying the MAP, as long as we have a reasonable account of what policy best deals with the clash in an unbiased way (it need not be perfect or admit of cardinal accounting).

#### **“4. No Prohibition of Fraud”**

This section asserts that “Libertarians usually say that violence may legitimately be used to prevent either force *or fraud*.” Do libertarians “usually” use the word “violence”? “Coercion” seems more likely and more appropriate. It continues that “according to NAP, the only legitimate use of force is to prevent or punish the initiatory use of *physical violence* by others. And fraud is not physical violence.” This is easily answered. A fraud is an *aggression* because it violates the property rights that the relevant agreement establishes. All this talk of “violence” is merely confused.

#### **“5. Parasitic on a Theory of Property”**

In this section we are told that “Even if the NAP is correct, it cannot serve as a *fundamental* principle of libertarian ethics, because its meaning and normative force are entirely parasitic on an underlying theory of property.” In fact, it need not be “parasitic on an underlying theory of property.” It is true that some NAP literature argues along the following lines: “aggression” is the violation of legitimate property, and legitimate property is only derived using assumptions that are independently argued to be legitimate (self-ownership, labour-mingling ownership, etc.). That is because it lacks an abstract theory of liberty from which to derive property. However, if it is assumed that libertarian ‘liberty’ is ‘the absence of aggression’, then this can be interpreted this in a pre-propertarian way. Property comes into existence in a libertarian manner when that property does not aggress on (i.e., proactively constrain or interfere with) other people. In the first instance, it does not aggress against other people to take control of one’s own body, and it does aggress to take control of other people’s bodies. Hence each person’s control of his own body follows from the existence of non-aggression, and having control of one’s own body is – in effect – de facto self-ownership (asserting that this is moral or lawful in practice are separate matters). After that, I make and claim this spear, hut, rabbit stew, etc., at no cost or loss to you: you are not worse off as a result. And if there is some vestigial cost or loss to others (for instance, you cannot now use the very same natural resources that I did), then we again resort to the MAP. The gist of this view should be clear enough.<sup>18</sup> In this way, respecting liberty – as the absence of interpersonal aggression – can indeed be *the “fundamental* principle of libertarian ethics.”

By way of illustration, we are asked to “Suppose *A* is walking across an empty field, when *B* jumps out of the bushes and clubs *A* on the head ... If it’s *B*’s field, and *A* was crossing it without *B*’s consent, then *A* was the one who was actually aggressing against *B*.” It seems worth noting that a disproportionately large retaliation itself becomes a new act of aggression. A theory of proportional response to aggression is derivable from the NAP/MAP.<sup>19</sup>

Thus there need be no problem with the view that “‘aggression,’ on the libertarian view, doesn’t really mean physical violence at all.” And there need not even be a problem with ‘aggression’ that “means ‘violation of property rights’” – as long as that is understood as a rule of thumb. But property rights themselves can be derived from whatever control of resources does not aggress, i.e., proactively constrain or interfere with others (or, in the event of a clash, whatever minimizes such constraints or interferences). Hence, it is false to say that “It is the enforcement of property rights, not the prohibition of aggression, that is fundamental to libertarianism.” As we have now seen, it is liberty

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<sup>18</sup> Myriad details are discussed in Lester 2012, but some critical essays become lost in their own inaccurate paraphrases of those details without first showing that they have grasped the basic problem or the basic idea of the solution.

<sup>19</sup> See Lester 2012 (108-120) and 2011 (Chapter27).

itself – interpreted as the absence of interpersonal aggression – that is “fundamental to libertarianism.” That conclusion should not be completely astounding.

## “6. What About the Children???”

This section asserts that “the NAP implies that there is nothing wrong with allowing your three year-old son to starve to death, so long as you do not forcibly prevent him from obtaining food on his own.” An analogy might help to answer this point. Suppose a child will not enter the swimming pool without a lifeguard. You volunteer to be the lifeguard, and as a consequence he gets into the pool. Then to allow the child to drown flouts the claim to your protection that you have previously given him: it is thereby an aggression against the child (positive actions are not always necessary to aggress against the claims we cede to people). In a relevantly similar way, a parent has assumed a duty of care for the vulnerable person that he has brought into existence. Negligently to allow one’s own child to starve to death is to flout that duty and thereby commit an aggression against that child. Therefore, one has a libertarian obligation either to feed him or to discharge the parental duty by finding someone who is willing to take it on.<sup>20</sup>

Consequently, it is incorrect to say that the NAP “implies that it *would* be wrong for others to, say, trespass on your property in order to give the child you’re deliberately starving a piece of bread.” As the starving child is having his given claims aggressed against, anyone has a right to come to his aid in his defence. Any duties that we create by our behaviour, including but not limited to explicit contracts, may be coercively enforced if that is what is necessary to minimize any overall aggression.

Zwolinski 2013 finally sums up its position with a few observations. It first notes that “There’s more to be said about each of these, of course. Libertarians haven’t written much about the issue of pollution.” Is that correct? For what it’s worth, typing “pollution” into [cato.org](http://cato.org) produced the claim of “465 results.” Then it observes that libertarians “can think up a host of ways to tweak, tinker, and contextualize the NAP in a way that makes some progress in dealing with the problems I have raised in this essay.” And, indeed, some Rothbardians have already done this with their interpretation of the NAP. But the essay asserts that “There comes a point where what you need is not another refinement to the definition of ‘aggression’ but a radical *paradigm shift* in which we put aside the idea that non-aggression is the sole, immovable center of the moral universe.” However, this overlooks a third possibility: one can have a paradigm shift within the interpretation of what constitutes “non-aggression” (or ‘liberty’). And this is what this response claims to have provided.

## “Libertarianism needs its own Copernican Revolution”

The essay’s concluding sentence is that “Libertarianism needs its own Copernican Revolution.” The analogy is more apposite than is implied (although, of course, Aristarchus of Samos long antedated Copernicus). For the “Copernican Revolution” that is possible here is to stop trying to theorize “non-aggression” (or liberty) ultimately in terms of legitimate property and do the reverse: to theorize legitimate property ultimately in terms of non-aggression (or liberty). And with this approach all six given reasons to reject the non-aggression principle can be comprehensively refuted.

Yet this “Copernican Revolution” is viewed as ‘heretical’ in some libertarian texts – where it has been noticed at all. And the ‘heresy’ is compounded by the ‘incomprehensible’ rejection of all supposed justifications in favour of the application of critical-rationalist epistemology. Consequently, it might be useful to conclude by emphasizing that this “revolution” is not a criticism of libertarianism, as such, nor is it any kind of compromise with non-libertarian principles. On the

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<sup>20</sup> To be more precise, this argument applies once personhood is achieved – almost certainly by “three” – and before that only the creation of suffering is wrong, but for non-libertarian reasons.

contrary, it is supposed to clarify and unify much currently diverse libertarian theory behind a single principle of liberty itself. That aim, at least, ought to be in accord with real libertarianism.

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