

A PROOF THAT LIBERTARIANISM IS EITHER FALSE OR BANAL

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Abstract

In this paper I consider all 243 positions that could constitute libertarianism and show that all but a few are false and the few remaining are banal. I argue further that all 243 versions must issue a promissory note for (what I call) the Reducibility of Interference Thesis and to (what I call) the Reducibility of Ownership Thesis, on neither of which can the libertarian make good.

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I. SOME META-CONSIDERATIONS

In *The Libertarian Idea*, and countless other tracts, Jan Narveson urges us to embrace libertarianism. But both this urging, and this embracing, are ambiguous. One could urge a position for any number of reasons, including, for example, this one:

What makes even a wrong-headed position worth pursuing is that by discovering *why* it's wrong-headed we can work towards one that's less so. Of course one can forget he's pursuing a position only provocatively. Indeed sometimes, if the pursuit is to bear fruit, he might *need* to forget. In such cases his urging a position only provocatively, and his urging it genuinely, will be phenomenologically indistinguishable. But then - and for the same reason - so too will be one's *being* urged to embrace it genuinely and her being urged to embrace it only provocatively. So, might Narveson's libertarianism be provocative rather than genuine? The data is consistent with either hypothesis. Neither is falsifiable. More to the point, however, what difference would it make?!

What *might* make a difference - we'll have to see - is whether the libertarian is urging us to embrace the position not because he himself embraces it but because he embraces some *other* position - a position *incompatible* with libertarianism - and it's *this* position which behooves him to urge us to embrace libertarianism. Nor would there be anything bizarre in this. In n>2-party states a leftist might vote centrist not because he is himself a centrist, but because he wants to frustrate the right. So in the wake of a centrist win it would be a poor pundit indeed who inferred that the electorate had just moved en masse to the center. For it might be that the majority are in fact leftists who'd simply misjudged the mood of their fellow electors. For that matter a leftist might even vote *right*, in the hope that a right-wing government would so alienate the center it would be driven into the arms of the left in the next election. So, similarly, an intelligent egoist could *advocate* altruism, including that he himself be altruistic. But he would not, on that account alone, be any the less an egoist.

Of course the limiting case of such strategic advocacy is a Y-ian self-effacing his Y-ianism. That is, suppose it's a precondition of one's successfully getting others to embrace X rather than Y that he convince himself of X rather than Y. Would it serve any purpose to insist that he remains, nonetheless, a Y-ian? I suspect not. So there'd be no point in asking the libertarian whether he'd self-effaced his anti-libertarianism. For *had* he done so he'd answer no, would he not? - and not disingenuously!

But even so, we do need to disambiguate between one's advocating X because he believes in X, and his advocating it because he believes in some Y incompatible with X which behooves him to encourage *others* to believe in X. Let's call the latter *strategic* X-ianism, and the former X-ianism *simpliciter*. Why is this distinction important? Because a refutation of the one is *not*, nota bene, a refutation of the other. For example:

Mill thinks that, more often than not, the best way to maximize aggregate utility is to maximize individual liberty, including, presumably, the individual's liberty to dispose of her property as she sees fit.¹ In other words, he thinks it serves utilitarian purposes to promote respect for private property. So Mill is a *strategic* libertarian. Of course he's also a strategic *egalitarian*, at least with respect to access to inequalities.² Only where such rules of thumb conflict is he driven back to his utilitarianism simpliciter. But he's by no means a libertarian or egalitarian *simpliciter*.

¹ A Mill scholar might dispute my reading him as an advocate of the institution of private property. But nothing in my argument stands or falls on this exegetical point.

² Likewise with my reading Mill as advocating equal access to positions of inequality.

As it happens Mill's wrong to think individual liberty, other than in the most uninteresting cases, maximizes aggregate utility.³ But this in no way refutes libertarianism simpliciter. Similarly, then, Narveson could be wrong to suppose his concerted efforts to promote libertarianism will forward the cause of libertarianism. Maybe people are just perverse. Maybe - and, given how insistent he can be, who could blame them?! - they'll embrace a position if and only if it's eschewed by Jan Narveson. But if so, all that follows is that *Narveson* should eschew libertarianism, not that it should be eschewed by the rest of us.

Is Narveson a libertarian, or is he really just, say, a Marxist masquerading as a libertarian? Again, the data is consistent with either hypothesis. Neither is falsifiable. But, once again, does it matter? Suppose even that, knowing full well a generalized respect for liberty is in *his* interests - though generally *not* in the interests of others - he regards the Principle of Liberty, however calligraphed, as swill suitable for these others because, by so feeding them, he can free ride on their stupidity. But to suppose this, and then to suppose it should matter, would be to commit the genetic fallacy, would it not? So why raise the distinction?

I raise it because whereas I'll be arguing against libertarianism simpliciter, nothing I have to say here will touch on the sagacity of strategic libertarianism. That is, there may be good reasons for some people - and Narveson may well be among them - to urge others to embrace libertarianism. But these reasons, if such there be, may be quite independent of those for which these others ought or ought not to embrace it.

What *does* matter, however - and it matters a great deal - is whether one subscribes to libertarianism *categorically*, or only because he subscribes to some *other* position, a position from which, he acknowledges, libertarianism follows only *contingently*. Narveson assures us that, unlike Mill, he's a libertarian simpliciter; that, not unlike Mill, he's a contingent libertarian; but that for him, unlike for Mill, this 'other' position is not utilitarianism. Rather, claims he, it's contractarianism.

And, say I, good that it is! Any theory that enjoins us to behave in a certain way because to do otherwise would be immoral begs the question, Why be moral? The only non-question-begging justification for morality is self-interest. That is, unlike the question, Why be moral?, the question, Why seek to promote our own interests? is nonsensical, in just the way Moore's Open Question Argument requires it to be if the moral is to be reducible to the non-moral. And the only theory that can ground morality in self-interest is contractarianism.

So in what follows I offer what I take to be an exhaustive taxonomy of those and only those positions that could count as libertarian *and* contractarian. And of these - or so I shall argue - all but a few are patently false, while those few, though true, are uninteresting so.. So contractarian libertarianism - this being the only species of libertarianism worth notice - is either false or banal.

II. BANALITY

By contractarian libertarianism - henceforth just libertarianism - I mean any view that can be articulated as follows:

1) $\forall w$, i.e. in every possible world which is both

a) anthropic, and

b) such that there are cooperative dividends available from mutual cooperation that are denied to mutual defection, or

$\exists w$, i.e. in at least one such world, or

Δw , i.e. in the actual world, which is, as it happens, both (a) and (b),

$\forall c$, i.e. under every circumstance in which one might find herself in w , i.e. in those worlds or in that world, or

$\exists c$, i.e. under at least one such circumstance, or

Δc , i.e. under a specific such circumstance,

$\forall p_1 p_2$, i.e. every pair of persons each of whom are both

a) concerned to maximize their expected utilities and

³ I offer no support for this claim here. But again, if it's disputed, nothing in my case against libertarianism hangs in the balance.

- b) competent to see how best to do this, or
- $\exists p_1 p_2$, i.e. at least one pair of such persons, or
- $\forall p_1 p_2$, i.e. a specific pair of such persons, will cooperate to put in place, at the lowest available cost to themselves, institutions designed to ensure that
 - $\forall a$, i.e. every person, or
 - $\exists a$, i.e. at least one person, or
 - Aa , i.e. a specific person, will respect the liberty of
 - $\forall b$, i.e. every person, or
 - $\exists b$, i.e. at least one person, or
 - Ab , i.e. a specific person.

The essence of libertarianism, then, is the claim that persons concerned and competent to maximize their expected utilities will cooperate to institute and maintain the most economic arrangements possible that will ensure that *a* will respect the liberty of *b*. Let's call this the Liberty Principle. And so let's call (1) the *Scope* of the Liberty Principle.

- 2) In world *w*, in circumstance *c*, person *a* respects the liberty of person *b* just in case *a* does nothing to interfere with *b* doing whatever *b* and *b* alone pleases with what belongs to *b*. Let's call this the *Interpretation* of the Liberty Principle.
- 3) A non-circular, non-question-begging, and non-trivial interpretation can be given to the notion of interference. Let's call this the Reducibility of *Interference* Thesis. And, finally,
- 4) a non-circular, non-question-begging, and non-trivial interpretation can be given to the notion of 'belonging'. Let's call this the Reducibility of *Ownership* Thesis.

I say "will cooperate to institute and maintain", rather than "will agree to" because of the compliance problem. That is, from the fact - even if it is a fact - that it's rational to agree to do something, it doesn't follow that it's rational to follow *through* on that agreement. So the rationality of our *agreeing* to respect each other's liberty provides insufficient assurance of our doing so. Instituting and maintaining arrangements that will *ensure* such respect, on the other hand, amount to adopting a pre-commitment strategy. And pre-commitment strategies, presumably, incur no such compliance problem.

I shall be arguing (in Section IV) that libertarianism cannot make good on either of the promissory notes issued in (3) and (4). This is not to say that neither interference nor ownership is reducible, but only that the reduction of either renders libertarianism extensionally equivalent to some species of the very political morality it takes itself to oppose. But for now I seek only to point out that, since there are three possible quantifications over each of 1) worlds, 2) circumstances, 3) institutor-pairs, 4) agents, and 5) patients, we can exhaust the set of claims a libertarian might wish to make by listing them on a truth table 3^5 (i.e. 243) lines long. But since, contra Rawlsians, whatever does or doesn't obtain in a counterfactual world can have no purchase on what a rational person should or shouldn't do in the actual one, we can immediately eliminate all but the last 81 - can we not?

No we can't. For the problem is that we don't know *which* possible world the actual one will turn out to be. For example, we don't know whether or not there'll someday come to pass a plague which will kill everyone on the planet but for a drop of Jones' blood, a drop for which, suppose, Jones is unwilling to part at any price. Nor can the libertarian discount this possibility - let's call it the *sangre de salvador* scenario - with the assurance that we'll cross that unlikely bridge when we come to it. For the question before us is not what we might do *then*, but rather whether we should put in place *now* institutions that will ensure Jones doing as she pleases with her own blood *cannot* be interfered with.

True, we sometimes do - because we have to - make irreversible decisions. And if this were one such situation we'd have no choice but to calculate the probabilities and direnesses of the various outcomes, select a meta-strategy -

straightforward multiplication, minimax, disaster avoidance, or what have you⁴ - and then act accordingly. But probabilities, direnesses, and meta-strategies are all things about which reasonable people can disagree. Certainly the libertarian, as such, can claim no special expertise in these matters.

But, as it happens, in very few of our choice situations are such pre-commitment strategies available, let alone required. So the libertarian might well suppose that, if push ever comes to shove, we can just dismantle whatever protections against interference in Jones' liberties we've put in place. But then what kind of protection would this dismantle-ability amount to in the interim?! Libertarianism would reduce to the admonition to "Respect the liberties of others only for as long as it serves one's purposes!" And if these hard-wrought protections can be justifiably dismantled in the face of a threat to subsistence, why not in the face of *any* circumstance in which one expects to gain more from dismantling them than from maintaining them? So what can libertarianism amount to beyond an admonition to "Be not too hasty, i.e. short-sighted, in dismantling such protections!"? And if that's all it amounts to, how is it to be distinguished from *strategic* libertarianism?

More formally, all that libertarianism can amount to is the claim that under *some* circumstances there'll be *some* people for whom it maximizes utility to ensure that *some* people will respect the liberty of *some* people. But then who ever supposed otherwise?

Even a stronger claim - i.e. one in which one, more than one, or even *all* of the quantifiers are promoted from 'some' to 'most' - would be unsurprising. That is, it's entirely possible that under most circumstances for most people it maximizes their utility to ensure most people respect the liberty of most people. Unfortunately, politics - and political philosophy - arise precisely from those cases not covered by this generalization.

Nor would it be surprising if *certain* of these quantifiers were boosted to an 'all'. That is, it could be that under most circumstances for all people it maximizes their utility to ensure most people respect the liberty of most people. It could be that under most circumstances for most people it maximizes their utility to ensure all people respect the liberty of most people. Maybe under most circumstances for most people it maximizes their utility to ensure most people respect the liberty of all people. Maybe, even, under most circumstances for all people it maximizes their utility to ensure all people respect the liberty of most people. Maybe under most circumstances for all people it maximizes their utility to ensure most people respect the liberty of all people. Maybe under most circumstances for most people it maximizes their utility to ensure all people respect the liberty of all people. And it could even be that under most circumstances for all people it maximizes their utility to ensure all people respect the liberty of all people.

How can I afford to make these concessions? By pointing out that anyone wishing to make such claims can simply individuate 'circumstances' in such a way that those that satisfy the claim outnumber those that don't.

What *would* be surprising, of course, would be if all *four* quantifiers were boosted to 'all', if, that is, one were to claim that under *all* circumstances, for all people it maximizes their utility to cooperate to ensure all people respect the liberty of all people. For only in saying *that* would the libertarian be claiming something interesting. Interesting but, of course, false. It's already shown to be false by the *sangre de salvador* example cited above.

III. ANTICIPATORY CONSTRAINING

That said, I'm not content to score just this *logical* point against libertarianism. For the libertarian could counter that, notwithstanding the limitations such counterexamples impose on the scope of his theory, the 'circumstances of [libertarian] justice' obtain in enough cases to render the theory interesting enough. That is, even if, as I've been suggesting, libertarian justice stands to contractarian justice as Newtonian physics stands to the General Theory of Relativity, the libertarian 'special case' is nonetheless the paradigm one, and so warrants serious philosophical treatment. The onus, therefore, falls on libertarianism's detractors to show otherwise. Accepting that onus, I argue as follows:

What the libertarian fails to appreciate, I submit, is the autonomous effects of our having to anticipate - what I'll grant, for the sake of argument, are - *non-paradigm* cases. If Jones' blood is required for the rest of us to subsist, the rest of us would if we could - and, according to the libertarian, should - dismantle the impediments we erstwhile instituted to protect Jones from our expropriating her blood. But this being the case, one of two things - one material, the other

⁴ For a quick course in these options, see Chapter 3. "Deterrence, Utility, and Rational Choice", in Gregory Kavka's *Moral Paradoxes of Nuclear Deterrence*, Cambridge U.P., 1987, pp. 57-77.

conceptual - must happen. Either we'll see to it at the outset that the impediments we institute to our interfering with Jones are not so forbidding we'll be unable to dismantle them, or else we'll so weaken our notion of 'belonging' that the impediments to interference we institute won't be called upon to protect Jones' blood. If the former, then libertarianism will amount to an admonition to "Institute those and only those impediments our concern for expected utility will countenance!" In which case libertarianism ceases to have any substantive content. Or, put more instructively, what impediments we have, historically, instituted probably just *are* those countenanced by our concern for expected utility. Or if not, they're certainly much closer to those countenanced by concern for expected utility than those advocated by libertarians! And if the latter - if, that is, what will count as 'belonging' to Jones is allowed to be, even in part, a function of what liberties with respect to which we'd institute impediments - then the libertarian's forfeited the Reducibility of Ownership Thesis. And if he does that, his position reduces to an admonition to "Institute impediments to interference with others doing as they please with those and only those things our concern for expected utility will countenance their doing as they please with!" But this too renders libertarianism contentless. Or, put more instructively, what property rights we in fact *do* respect probably just *are* those our concern for expected utility countenances our respecting. So, either way, the libertarian position collapses.

IV. OWNERSHIP AND INTERFERENCE

Nor am I content to leave libertarianism at even this low pass. We've already seen what happens if the libertarian forfeits the Reducibility of Ownership Thesis. He forfeits the Reducibility of Ownership Thesis if his interpretation of ownership loops back onto what we would institute impediments to protect. But, it might be hoped, what if ownership can be interpreted independently?

For a deontological libertarian, e.g. Nozick, this is doable. But not for a contractarian. Why not? Because we can say, if we like, that

a person P owns a thing T just in case P appropriates it from the commons without worsening the condition of anyone else at the time of the appropriation,

or some such variation on the Proviso. But the term 'appropriation' is question-begging. We can try to reduce *it*, in turn, to 'makes use of'. But the notion of 'use' is relative to a task. If all I want is to have more land than any other monarch in Europe, then I've 'made use of' the entire Western Hemisphere without ever having set foot on it. The only way to circumvent this result is to impose further constraints on what will count as use. But what could motivate such constraints other than a recognition that, in the absence of such constraints, too few people would come on board? So, once again, the interpretation of ownership loops. And so, once again, the Reducibility of Ownership Thesis fails.

And, for similar reasons, likewise fails the Reducibility of Interference Thesis. Here's how:

The libertarian sets great store in the distinction between positive and negative rights. But this distinction rests on an interpretation of interference. My physically removing the widow's mite from her mouth interferes, claims the libertarian, with her liberty to do with that mite as she and she alone sees fit. It does so, claims he, in just the way that my failing to put it in her mouth does not. But what way is that? Certainly not any way relevant to her being able to make use of that mite if all she wants to do with it is eat it and she happens to be paralyzed!

Besides, what the libertarian counts as 'doing' and 'not doing' - the so-called commission/omission distinction - is already value-laden. When I fail to lend assistance, I'm not doing nothing. I'm doing something *else*. To describe this something else as 'doing nothing', or even as 'standing idly by', is to have already supposed that the more informative description - 'staring at the sky', say - is morally neutral. But this too begs the question. Why is taking the mite from her mouth an interference with her liberty whereas 'staring at the sky' is not? The answer can't be that the one makes reference to what's hers and the other doesn't. For we can as readily re-describe the first as 'closing my hand and then walking away' as we can the second as 'staring at the sky while the widow's unable to access her mite'. So libertarian description schemata presuppose the very distinction they seek to justify.

Nor does the problem disappear by reverting instead to the notion of 'coercion'. If you'll as surely die from starvation if I don't feed you as you will if I shoot you, how is my threatening not to feed you any less coercive than my threatening to shoot you? Because the food with which I threaten not to feed you isn't yours? But then neither is the gun and bullet with which I threaten to shoot you. Because you have no right to be fed, but you do have a right not

to be shot? But, once again, this begs the question. So the Reducibility of Interference Thesis fails as well.

Narveson - not unlike G.E. Moore before him - seems unmoved by such difficulties with reduction. Both seem content with arguments from paradigm cases. Unfortunately, such arguments are notoriously underdetermining. "See this videotape?" they ostend. "*That's* what we mean by assault!" Well, a jury of Rodney King's peers didn't think so!

And with that, the case against libertarianism rests. We've now discovered *why* the position is wrong-headed. And so, on the most charitable reading of the libertarian's purpose in urging the position on us in the first place, that purpose is now served.