

Kymlicka on Libertarianism: a Response¹

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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 examines sections relevant to libertarianism in Will Kymlicka's Contemporary Political Philosophy: An Introduction (2nd ed.), making and explaining the following criticisms. Kymlicka's "preface" misconstrues political philosophy's progress, purpose, and its relation to libertarianism. In his "introduction", his "project" mistakes libertarianism as "right-wing", justice as compromise among "existing theories", and equality as the "ultimate value." His "a note on method" in effect takes as axioms, beyond philosophical examination, various alleged desiderata and the necessary moral role of the state. Moreover, his "ultimate test" being "our considered convictions" amounts to a conservative and illogical justificationism at odds with radical and coherent critical rationalism. Kymlicka's chapter on "libertarianism" mistakes it as, inherently and unavoidably, free-marketist, anti-consequentialist, deontological, Nozickian, requiring "a foundational moral premiss," without objective content, unmaximisable, indistinguishable from license, equality-based, anti-anarchist, "self-defeating", indefensibly "unfair", impractically "philosophical", and without influence. A different version of libertarianism easily withstands all Kymlicka's antipathetic criticisms.

Introduction

In his well-known introduction to contemporary political philosophy,² Will Kymlicka includes a substantial chapter on libertarianism plus a preface and introduction that are also relevant to this subject. These sections are quite likely to help form opinions about libertarianism with many readers. Unfortunately, very many of Kymlicka's assumptions and arguments seem to me to be crucially mistaken. As I have no objection to his way of proceeding and organizing his views, I shall respond to Kymlicka's points in the order in which they arise in his text. Consequently, it has proven convenient to divide my reply into sections following Kymlicka's own sections. This should make it easier for anyone to locate and follow Kymlicka's original text and compare it with my responses, should they wish to do so.

Kymlicka's "PREFACE TO THE SECOND EDITION"

In the preface, Kymlicka says "it is difficult for me to understand why anyone would get involved in the project of political philosophy if they did not think we could make progress..." (x). I heartily agree with this. In social science and even ideology progress is surely possible. However, progress is

¹ I thank Mark Brady and David McDonagh for invaluable critical comments on this essay, and absolve them of any remaining errors. An edited version appeared in *Libertarian Papers* 4, 2 (2012). The version in this book takes precedence.

² Kymlicka 2002.

not always as obvious as in the physical sciences. And even in the physical sciences errors and dead ends have sometimes been mistaken for progress for a very long time, often decades. Where Kymlicka sees progress in political philosophy, I usually see errors and dead ends. For instance, he says, “One theme which I emphasized in the first edition was the way each theory could be seen as trying to interpret what it means for governments to show ‘equal concern and respect’ to their citizens” (x). Unfortunately, this thematic assumption thereby rules out of consideration things that political philosophy urgently needs to consider: specifically, private-property anarchism and a libertarianism that is unconcerned with the emotional demand for “equal concern and respect”; more on these points later. In what follows, I shall isolate what I take to be key errors with respect to libertarianism and try to show that they are indeed errors. Kymlicka often repeats himself, and I have tried to avoid repeating my criticisms unless an extra twist seems to be involved or some emphasis seems to be desirable.

We are soon given an example of a key error when we are informed that “To date, there have been three main approaches to defending liberal democracy: utilitarianism, liberal equality, and libertarianism” (x). Setting aside utilitarianism and “liberal equality” for the moment, by “liberal democracy” Kymlicka intends ‘liberal’ in a modern sense that is only tenuously related to what ‘liberalism’ originally meant and ‘democracy’ as some form of what is really elected oligarchy. Consequently, libertarianism is, on the contrary, one of the main approaches criticising “liberal democracy.” Why does Kymlicka not see this? As we shall see, he has succumbed to an illusion of fundamental agreement.

Kymlicka’s “INTRODUCTION”

“1. THE PROJECT”

We now turn to the introduction, where we are told that “Our traditional picture of the political landscape views political principles as falling somewhere on a single line, stretching from left to right” (1). True. But we are then told “people on the left believe in equality, and hence endorse some form of socialism, while those on the right believe in freedom and hence endorse some form of free-market capitalism.” This is, at best, some version of the modern view of left and right. The traditional view, originating in France, had laissez-faire liberals on the left and state-interventionists on the right. It was not a neat and clear division, perhaps, but it is neater and clearer than the muddled modern division that Kymlicka takes to be “traditional.” He goes on to discuss problems with the left-right division for some ideologies,³ but he is happy to call libertarianism “right-wing.”

Kymlicka notes all the various modern theories in political philosophy and suggests that, “To subordinate all other values to one overriding value seems almost fanatical. A successful theory of justice, therefore, will have to accept bits and pieces from most of the existing theories” (3). To think that some form of compromise must be the solution is epistemologically arbitrary. It is also suggestive of the democratic theory of truth.⁴ Moreover, it is, in a sense, to “subordinate all other values to one overriding value” namely compromise. And so it is itself both “fanatical” and inconsistent. By analogy, it would be just as arbitrary and inconsistent to suggest that a true scientific theory of some phenomenon “will have to accept bits and pieces from most of the existing theories.”

However, by way of a potential reconciliation, we are offered Dworkin’s view that “every plausible political theory has the same ultimate value, which is equality” (3) in the sense of “treating people ‘as equals’”: “each citizen is entitled to equal concern and respect” (4). This view about “concern and respect” cannot be right. Concern and respect inherently involve emotions and they

³ As I have done myself. See, for instance, Lester 2011.

⁴ This is the ironical view that a popular vote is the correct epistemology.

cannot be felt for all and sundry. But liberty can be observed ‘equally’, at least in the purely formal sense that everyone is deemed equally entitled to complete interpersonal liberty. There is to be no imposed hierarchy, such that some people inherently count for more than others when it comes to liberty. Does this mean that equality is a more ultimate value than liberty itself? Of course not. The libertarian wants more liberty rather than less even if it is not spread equally. So equality cannot be the dominant principle. Consider a nutritionist who advocates vitamins as essential for everyone’s health. Does that mean that he is not really concerned with nutrition, or vitamins, or health but, because it is good for everyone, with equality? Of course not. That would be a similar, but more obvious, kind of confusion. Kymlicka continues that, “those on the right believe that equal rights over one’s labour and property are a precondition for treating people as equals” (4). Libertarians should not be tempted to agree. For libertarians believe that, ideally, everyone should have full liberty. Therefore, “equal rights” are no use if they are not libertarian rights and equality of liberty is not preferable to a greater total amount of liberty (I shall return to this point).

“2. A NOTE ON METHOD”

In his “A Note on Method” Kymlicka tells us that he agrees that “as Robert Nozick puts it, ‘moral philosophy sets the background for, and boundaries of, political philosophy.’” But he then goes on to state that “We have moral obligations towards each other, some of which are matters of public responsibility, enforced through public institutions” (5). By “public” Kymlicka does not mean ‘public’ in any sense whatsoever as voluntary organizations and institutions (whether profitable or charitable) that anyone might choose to become involved with. He means, as he makes clear, state institutions. In other words, he is taking it as an axiom – part of his philosophical “method” – that there is a moral role for state institutions. I do not see how this assumption can possibly be compatible with writing a book introducing political philosophy. Moreover, the word “public” is hardly a neutral term. ‘Government’, ‘state’, ‘tax-funded’ are all objective and neutral and so seem preferable in a strictly scholarly context. The term “public” is as biased in favour as the term “parasitic”⁵ is biased against. The fact that the bias is popular political propaganda is no reason for a political philosopher to accept it – or promote it.

Kymlicka insists that “political principles ... must not crowd out (in theory or practice) our sense of personal responsibility ...” (5). He quickly goes on to add that “it is equally true that any account of our personal obligations must make room for what Rawls calls ‘the very great values applying to political institutions’, such as democracy, equality, and tolerance.” In other words, as a matter of philosophical “method” he is again taking it as axiomatic that we must have both “our sense of personal responsibility” and “democracy, equality, and tolerance.” But political axioms are exactly what it is the purpose of political philosophy to examine critically. He even says, “I believe that the ultimate test of a theory of justice is that it cohere with, and help illuminate, our considered convictions of justice” (6). This is a popular and foolish idea. Why should we look for what can only “cohere” with our “considered convictions”? This is only a nice expression for what, epistemologically, must remain assumptions, biases, and prejudices (as I shall explain next). Is that approach even compatible with philosophy? Why should we rule out, before examination, the possibility that a new theory might challenge and overturn some “considered convictions” so that we learn something new?

⁵ Not my word here, but one sometimes used by libertarians, e.g., “the parasitic, counterproductive, ‘public’ sector.” Murray Rothbard, “Repudiate the National Debt”, *Chronicles* (June 1992).

As my own brief “note on method,” I should state that I am using Karl Popper’s critical-rationalist epistemology.⁶ This can be explained as follows. All observations are theory-laden assumptions (we cannot perceive reality directly). All arguments rest on, and thereby amount to, assumptions. Logically, we can never support or ‘justify’ assumptions because of an infinite regress. Therefore, the only logical epistemology is testing and criticism to try to detect false assumptions. 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, but that explanation will itself make assumptions and not be complete.⁷ More on this below and in the bibliography.

Now we turn to the chapter on libertarianism itself.

Kymlicka on “LIBERTARIANISM”

“1. THE DIVERSITY OF RIGHT-WING POLITICAL THEORY”

We have dealt with the left-right confusion already. Kymlicka’s first sentence is, “Libertarians defend market freedoms, and oppose the use of redistributive taxation schemes to implement a liberal theory of equality.” It would be more accurate to say that libertarians, first and foremost, defend some version of a non-invasive theory of interpersonal *liberty*.⁸ Hence the name ‘libertarianism’. If people wish to use their liberty for market transactions, then that is allowed. If they wish to live in a moneyless commune, then that is equally allowed and not in any way a lesser liberty. However, people are also at liberty to engage in all manner of non-invasive personal activities – such as recreational drug use, consensual sexual behaviour, free speech, and freedom of association.⁹ These liberties have no particular relation to whether or not they happen to involve markets. And it is quite misleading to fail to give clear and equal prominence to these liberties if attempting to outline libertarianism.¹⁰ Apart from Kymlicka’s personal disagreement with it, why give special mention to the fact that libertarians “oppose the use of redistributive taxation schemes to implement a liberal theory of equality”? Libertarians oppose all acts they perceive as interpersonally invasive, whether by governments or individuals.

Kymlicka goes on to state that, unlike libertarians, any “utilitarian commitment to capitalism is necessarily a contingent one.” But why can the same not be true of libertarians? Why would libertarians want “capitalism” if they thought it were a disaster either for liberty or for welfare (both possibilities seem conceivable to me)? I wouldn’t, and I don’t know of any libertarians who would. Kymlicka mentions, “If, as most economists agree, there are circumstances where the free market is not maximally productive – e.g. cases of natural monopolies...” But *libertarian* economists cannot fairly be overlooked in an introduction to libertarianism. And they would typically not “agree” that

⁶ See, for instance, Popper [1963] 1978 and [1972] 1979, and Bartley 1990.

⁷ See also the entries on “critical rationalism” and “critical-rationalist libertarianism” in Lester Forthcoming.

⁸ This comes in a variety of forms, though not always explicit. Perhaps the most famous is the non-aggression principle (or axiom), whereby liberty is ‘the absence of aggression’ (possibly in addition to ‘homesteading’ or initial acquisition and voluntary transfers – though presumably no aggression is involved in these either). See, for instance, Rothbard [1973] 1978 – a book not in Kymlicka’s bibliography, incidentally. And books and articles by Walter Block, Hans Herman Hoppe, David Gordon, and an indefinitely large number of other libertarians all cite and use the non-aggression principle. My own theory of interpersonal liberty is ‘the absence of proactively imposed costs.’ See Lester [2000] 2012.

⁹ A general list of what libertarianism permits can be found in a variety of books introducing the subject. The two best known are probably still the aforementioned Rothbard [1973] 1978 and Friedman 1989.

¹⁰ Kymlicka does not completely ignore them: he relegates mention of such liberties to endnote 2 in order to distinguish libertarians from “neo-conservatives.”

“the free market is not maximally productive” or that there are “natural monopolies.”¹¹ And it was exactly coming to such consequentialist opinions that led at least some economists, and some non-economists, to become libertarians.¹² Kymlicka also refers to the possibility of a utilitarian view that

redistribution can increase overall utility even when it decreases productivity. Because of declining marginal utility, those at the bottom gain more from redistribution than those at the top lose, even when redistribution lessens productivity. (102)

And, again, many libertarians would not agree with this as a realistic possibility because they think it neglects the medium- to long-term effects of a system with such systematic interference in economic calculation.¹³ If only the government stopped interfering with the economy, then there would be a compound growth of prosperity that particularly benefitted the worst-off “because of declining marginal utility.” And if libertarians did not believe this, then at least some of them would simply not be, or have become, libertarians (including myself and many libertarians personally known to me¹⁴).

According to Kymlicka,

history does not reveal any invariable link between capitalism and civil liberties. Countries with essentially unrestricted capitalism have sometimes had poor human rights records (e.g. military dictatorships in capitalist Chile or Argentina; McCarthyism in the United States), while countries with an extensive welfare state have sometimes had excellent records in defending civil and political rights (e.g. Sweden). (102)

But if we really have “unrestricted capitalism” – i.e., a completely “free market” – then that must mean that people are free to enjoy all the liberties of civil society where markets are involved.¹⁵ And an advanced industrial society has markets involved almost everywhere. It is dubious to suggest that Chile, Argentina, etc., were free markets, as completely free markets (whatever most economists say) ipso facto cannot have taxes or government regulations. It is equally dubious to suggest that Sweden defended “civil liberties” in a way that libertarians would concede as “excellent.”¹⁶ What Kymlicka means by, what he significantly renames, “civil and political rights” are, rather, what libertarians would see as politically-correct privileges and licences that have nothing to do with liberty. It would take some argument to explain all this in detail, and I have done so elsewhere.¹⁷ The point is that

¹¹ Or, at least, not in any way that one might plausibly hope that politics could improve upon. See, for instance, the economics writings of Austrian School economists, such as Ludwig von Mises, Murray Rothbard, and Israel Kirzner, but also the more empirical David Friedman.

¹² I could not say to what extent libertarian economists, or libertarians generally, are consequentialists, but some clearly are – not least David Friedman.

¹³ This is assuming, of course, that very broad interpersonal comparisons of utility are intuitively acceptable, which some libertarians deny—notably, Murray Rothbard: see his “Toward a Reconstruction of Utility and Welfare Economics.” *On Freedom and Free Enterprise*, ed. Mary Sennholz (Princeton, NJ: D. Van Nostrand, 1956).

¹⁴ Perhaps attention to the consequences is more common in the UK than in the U.S.

¹⁵ When he uses the expression “unrestricted capitalism,” Kymlicka probably means to include corporatist privileges and dubious government interventions. But that is not the literal meaning of the expression, and libertarians would typically condemn such things themselves.

¹⁶ I can find no article on the specific thesis that many of Sweden’s alleged “civil liberties” clash with what libertarians would regard as real civil liberties. However, it ought to be clear that Sweden does have “civil and political rights” that are incompatible with libertarian civil liberties: restrictions on various kinds of discrimination, for instance. By critical rationalism, of course, it would be a particularly egregious example of justificationism to require that any ‘controversial’ assertion should cite a source or provide a justification: that rule would amount to a ban on anything new ever being said.

¹⁷ Lester [2000] 2012 and Lester Forthcoming.

Kymlicka is here offering his audience of enquiring young minds only his stereotypical so-called “left-wing” worldview when, in an introduction to contemporary political philosophy, he ought to be providing some unbiased philosophical analysis.

He continues his description with the assertion that “Libertarianism differs from other right-wing theories in its claim that redistributive taxation is inherently wrong, a violation of people’s rights” (103). The more proximate point is that taxation flouts liberty. It is institutionalised extortion. And given that it does flout liberty, the argumentative onus (morally) would appear to be on those who advocate the flouting. But Kymlicka is determined to discuss only rights and the market here, explaining that libertarians hold that “government has no right to interfere in the market, even in order to increase efficiency.” How is this logical possibility of governments increasing efficiency realistic? We are simply not told.

“2. THE SELF-OWNERSHIP ARGUMENT”

Kymlicka particularly criticizes Robert Nozick’s views on libertarianism. In a single chapter on libertarianism, this is probably a mistake – because Nozick is, ultimately, a straw man. Admittedly, unlike most straw men, Nozick did exist. He was also a philosopher of note and wrote a famous philosophy book on libertarianism.¹⁸ However, for one thing, Nozick has no explicit theory of liberty, and tries to use self-ownership instead (as Kymlicka realizes and criticizes at some length).¹⁹ But, more significantly still, Nozick’s approach is viewed by statist critics as one of capitalist rights irrespective of any welfare consequences. And they find this all too easy to reject. So do I, and I am a private-property anarcho-libertarian. Why should anyone accept a system that makes no substantive claim to good welfare consequences and, apparently, tolerates potentially very bad welfare consequences?²⁰ By contrast, the ‘classical liberal compatibility thesis’ asserts that liberty, explicably and testably, systematically promotes welfare.²¹

The two big issues that Kymlicka needs to discuss are 1) what is objectively entailed by the non-invasive, interpersonal liberty that libertarians advocate, and 2) whether such liberty in practice clashes significantly, to its detriment, with human welfare or other desiderata. His discussion in this section is irrelevant to either of these and so it would not be very useful for me to reply to it. And the same applies to Kymlicka’s criticisms of mutual-advantage contractarianism in his next section, so I omit that section completely.

“4. LIBERTARIANISM AS LIBERTY”

Finally, Kymlicka moves on to a section entitled “libertarianism as liberty.” And it is a relief to read the words, “Some people argue that libertarianism is not a theory of equality or mutual advantage. Rather, as the name suggests, it is a theory of liberty” (138). But how could it be anything else? Surely all libertarians think they are advocating liberty in some sense. However, Kymlicka is not being unfair to state that, taken narrowly at least, “This is not a plausible interpretation of Nozick’s theory. ... He gives us no purchase on the idea of freedom as something prior to self-ownership from

¹⁸ Nozick 1974.

¹⁹ Many other libertarians also assume that self-ownership is the fundamental principle of libertarianism. But, as I do not, I have no need to reply to Kymlicka’s criticisms of it.

²⁰ There are libertarians that, in principle, insist that libertarian rights are trumps. However, they usually assume good welfare consequences – or have suggestions to deal with bad welfare consequences. Walter Block is one such deontological libertarian. By contrast, David Friedman is in the welfare-consequentialist camp. As a critical rationalist, I would not attempt to support the libertarian conjecture with either rights or welfare – or anything else. And criticisms of libertarianism may be refuted in an unlimited variety of ways.

²¹ *Escape from Leviathan* is a sustained critical-rationalist defence of the classical liberal compatibility thesis.

which we might derive self-ownership” (138). The crucial error that Kymlicka now makes is in thinking that liberty must be a founding and overriding value. He writes of liberty as being “a foundational moral premiss.” In other words, he thinks liberty must here be both a supporting or justifying principle and a moral one. On the contrary, it can be held as both a conjectural principle to be criticized (in the critical-rationalist manner) and as value-free (insofar as we are not advocating liberty but discussing what it entails).

Kymlicka continues: “One principle of liberty is that freedom should be maximized in society” (140). And he will argue that this

principle is absurd, and has no attraction to anyone, including libertarians ... Moreover, even if we accept the absurd or unattractive interpretations of the principle of liberty, they still will not defend libertarianism. (140)

And this appears to be an admirably bold and clear assertion, if giving a slight impression of bias in an introduction to contemporary political philosophy.

His first substantial criticism of this view is that “we could increase the amount of freedom in society by increasing the number of people, even if each person’s freedom is unchanged” (140). This sort of criticism is relevant to some utilitarians. Utilitarians sometimes advocate utility as such a quantitative end-in-itself, and so they need to have an answer to this. However, I don’t think this is analogous with what libertarians believe for two reasons. 1) Libertarians do not advocate as much liberty as possible in the same abstract way, but, rather, as much liberty as possible for existing people. Language is ambiguous, of course. But that libertarians only intend to refer to existing people, ought to be clear enough.²² And I cannot see that the desirability of liberty for existing people is incoherent or that it logically entails that, *ceteris paribus*, more people are better from a libertarian viewpoint. 2) However, there is a more important and clinching argument based on the fact that liberty (as libertarians conceive it, at least) is an absence²³ while utility is a presence. Utility is a positive state that is additional. My one util and your one util make two utils. Thus, *ceteris paribus*, there is more utility if there are more people. But liberty is not a positive thing. It is about the absence of a bad, namely interpersonal invasions (or aggressions, or proactive impositions). Liberty is not about the presence of units of liberty but, by analogy, about the absence of units of invasion. I see no confusion in saying that there is more liberty in the world if an existing person escapes some invasion. But there is no more liberty in the world if an extra person is added to the world, even if that extra person has perfect liberty. The addition of someone with zero proactive impositions leaves liberty at the same total level of infractions. And if the additional person does not have perfect liberty, then total liberty will go down. Does this mean that more people is usually worse for liberty? No, because, as in 1, we are not aiming at abstract total liberty but liberty for those people who exist. Part of the problem here is that Kymlicka is proceeding without first philosophically considering, or at least reading about, what libertarians must intend by ‘liberty’.

That he simply has not grasped the libertarian conception of liberty is made plain when he says

²² I don’t know of any libertarian author that takes this abstract view of liberty, and Kymlicka offers no example.

²³ As we saw in footnote 7, with the libertarian non-aggression principle interpersonal liberty is, implicitly, the *absence* of aggression. With my own theory, liberty is explicitly the *absence* of proactive impositions. And even the broadest dictionary definitions of ‘liberty’ in non-social terms have it as an *absence* of some sort of constraint, restraint, or confinement. There is also a somewhat muddled conception of “positive liberty” (as famously contrasted with “negative liberty” by Isaiah Berlin in his “Two Concepts of Liberty”, 1958) but that is not relevant here.

The principle could also justify unequally distributing liberties. If five people enslave me, there is no reason to assume that the loss of my freedom outweighs the increased freedom of the five slave-owners. They may gain more options or choices collectively from the freedom to dispose of my labour than I lose.... (141)

But the slave-owners do not gain any liberty. Liberty is not licence. Liberty is being not proactively imposed on by other people (by being made a slave, for instance). Licence is proactively imposing on other people (by making someone a slave, for instance). It seems doubtful that Kymlicka asked any libertarians what they thought of this criticism.

So Kymlicka has not begun to show that libertarians cannot have a liberty-based theory in the sense of respecting the liberty of existing people. Kymlicka calls his view, “a natural interpretation of the claim that freedom is the fundamental value....” Even if it is a “natural interpretation”, it is irrelevant to a philosophical criticism of libertarianism. He goes on to say that,

it is encouraged by the libertarian’s rhetorical rejection of equality. Libertarians believe in equal rights of self-ownership, but many of them do not want to defend this by appeal to any principle of equality. They try to find a liberty-based reason for equally distributing liberties. (141)

I do not see anything merely rhetorical about the libertarian rejection of equality. Libertarians do not need to “believe in equal rights of self-ownership” or “equally distributing liberties” (though some libertarians might do so). They can simply believe in self-ownership and other liberties for all because liberty seems desirable. The conjectured value of liberty is what they appeal to. Equality has nothing in particular to do with it. As explained earlier, advocating liberty for everyone is on a par with advocating vitamins for everyone. Neither view implies a more fundamental principle of equality. Kymlicka is so obsessed with equality himself that he sees it everywhere. His position is as biased and muddled as a libertarian asserting that egalitarians ultimately appeal to a more fundamental principle of liberty because they want people to enjoy the liberties that equality brings. It might be true that “some libertarians say that they favour equal liberties.” But then they are muddled too and I don’t defend them.

Persisting in his equality error, Kymlicka also supposes that libertarians “reject increasing the overall amount of freedom by unequally distributing liberties” (141). On the contrary, given the choice between a world with more liberty (lower overall taxation, for instance) and a world with equal liberty (higher but more equal taxation, for instance), a libertarian must clearly prefer the world with more liberty. If any self-styled ‘libertarian’ were prepared to sacrifice total liberty in order to promote equal liberty, then he would seem to be confused in thinking that he was primarily a libertarian.²⁴ Given that Kymlicka appears keen to refute libertarianism, one might think that he would quote more of what libertarians say about such things instead of criticizing his own suppositions. Consistent libertarians are simply not “committed to equal liberty for each person”, as the ideologically blinkered Kymlicka insists. They must advocate complete liberty for each person, and failing that, as much total liberty as possible.

Therefore I shall largely ignore, as irrelevant, the theory that Kymlicka calls “neutral liberty” or “the ‘greatest equal liberty’ principle”: “that each person is entitled to the most extensive liberty compatible with a like liberty for all” (141). However, during his discussion, his attempts to “give a non-moralized definition of liberty” are relevant. The two views he considers are “a simple counting up of possible actions or choices” and “some assessment of the value or importance of these different

²⁴ To simplify matters, I am setting aside the problem of different subjective burdens.

options.” What do “possible actions or choices” have to do with the libertarian conception of liberty? Virtually nothing at all. How do these relate to liberty as interpersonal non-invasiveness?²⁵ They don’t. Kymlicka has not addressed any actual libertarian theories of liberty. He is attacking straw men.

Kymlicka usefully recaps his view with the statement that, “It is often thought that libertarianism can best be understood and defended in terms of some principle of liberty” (148). Understood, yes. Defended, not necessarily. Libertarianism is exactly about having maximal interpersonal liberty. From a critical rationalist viewpoint, how that is defended just depends on the particular criticism it faces. And there is no limit at all on the number or type of criticisms that could be made. Kymlicka’s epistemological mistake is in thinking that either liberty itself or something else must be the thing that libertarianism is defended in terms of. In other words, liberty or something else must be what ‘justifies’ libertarianism as “a foundational moral premiss.” But as critical rationalism explains, nothing supports any theory, whether factual or moral. Kymlicka is looking for a mare’s nest and complaining that he can’t find one.

Kymlicka asks “is it true that the free market involves more freedom than the welfare state?” (149). And says “In order to assess this claim, we need first to define freedom.” We certainly need a theory or at least some account of freedom – and preferably a libertarian one in the first instance. But then Kymlicka applies various accounts of freedom that are not libertarian. He discusses Antony Flew and says that “Flew’s equation of capitalism with freedom is rendered problematic. For it is the owners of the resource who are made free to dispose of it, while non-owners are deprived of that freedom” (149). Again, this is a failure by Kymlicka to distinguish liberty from licence. We do not deprive would-be thieves of a freedom in any libertarian sense when we lock our doors. Of course, there might well be something wrong with the libertarian sense (or even contested senses) of ‘liberty’ or ‘freedom’. But why does Kymlicka not criticise them? Because he has not troubled himself to find out what they are. He thinks he can sort it all out a priori. He is completely mistaken.

He defends his zero-sum view of freedom by reference to “the origin of private property” concluding that “Since private ownership by one person presupposes non-ownership by others, the ‘free market’ restricts as well as creates liberties, just as welfare state redistribution both creates and restricts liberties” (150). But the libertarian issue is whether some example of private ownership minimizes any interpersonal proactive impositions (i.e., initiated invasions, interferences, or restrictions). And if it does, then that is the libertarian option. And that is what allowing initial acquisition and the free market does do and what the welfare state does not do (though we always have the pre-property principle of interpersonal liberty to fall back on if there are any problem cases). Of course, I don’t expect this necessarily brief account to be enough to persuade Kymlicka – or even to be fully clear to him. But I have written at length about it elsewhere, not least in *Escape from Leviathan*. And that account refutes the faux sophisticated conclusions of G. A. Cohen, which Kymlicka quotes with approval, that “private property is a distribution of freedom and unfreedom” and that “the sentence ‘free enterprise constitutes economic liberty’ is demonstrably false.”

Consequently, Kymlicka is wrong on two crucial counts when he concludes that

the system of exchanges which Nozick protects *itself* requires continuous interference in people’s lives. It is only continuous state intervention that prevents people from violating Nozick’s principles of justice. (150)

He is wrong, first, because it is not a proactive (or initiated) imposition (or “interference”, or invasion, or aggression, or restriction) to defend exchanges that do not themselves proactively impose. And,

²⁵ As most famously found in the non-aggression principle.

second, because “continuous state intervention” is the primary source of “violating Nozick’s principles of justice”, i.e., liberty (albeit inadequately theorized via self-ownership in Nozick). Free-market property-protection would not have this “continuous interference” because it would offer continuous defence²⁶ – which point leads into one of Kymlicka’s biggest and clearest errors.

Kymlicka argues that

Since property rights entail legal restrictions on individual freedom, anyone like Flew who claims to oppose ‘any social or legal constraints on individual freedom’ should presumably reject state-enforced property rights, and endorse anarchism instead. But libertarians are not anarchists: they strongly believe that the state should impose constraints on individual freedom to uphold property rights. (150)

As we have seen, property rights do not, ipso facto, “entail legal restrictions on individual freedom” in the libertarian sense, because they promote freedom when they do not proactively impose or when they minimize proactive impositions. But the howling error here is asserting that “libertarians are not anarchists”. On the contrary, many of the best known libertarians are anarchists. How could Kymlicka not know this? The only book by Murray Rothbard in Kymlicka’s bibliography is *The Ethics of Liberty*. But in that book Rothbard’s anarchism is made very plain, particularly in his criticisms of Nozick in Chapter 29, “Robert Nozick and the Immaculate Conception of the State.” That chapter even concludes with the following sentence: “Thus, the most important attempt in this century to rebut anarchism and to justify the State fails totally and in each of its parts” (253).²⁷

Kymlicka continues, “most libertarians do not claim that the free market creates more freedom than it takes away. They argue, with Flew, that it does not create any unfreedom at all” (150). That is more or less right. He asks, “How can libertarians say this? The answer is that they have shifted to a moral definition of freedom, which defines freedom in terms of the exercise of one’s rights” (151). No, that is not the correct answer at all (though doubtless some self-identified libertarians might well give it). Property rights are an objective way of minimizing proactive impositions (or maximizing liberty). And it is an entirely separate matter whether this is moral or not.

Kymlicka continues his attacks on the enemy army of straw men. At one point Kymlicka says, “Having independent access to resources is important for our purposes, and hence our purposive freedom, and that argues for liberal equality not libertarianism” (152). But, say libertarians, the state does not increase our “independent access to resources.” Instead, it destroys resources by its bottomless pit of wastefulness and makes people increasingly dependent on a capricious and intrusive leviathan state. Of course the libertarian view is controversial, and I do not have the space to explain and defend it in detail here. My point here is that Kymlicka is putting forward his own controversial statist view as an obvious fact in a book that purports to be an introduction to contemporary political philosophy.

In the final paragraph of “libertarianism as liberty” Kymlicka states that “There is no philosophical and political problem of freedom as such, only the real problem of assessing specific freedoms” (153). On the contrary, as we have seen, there is something important that libertarians are referring to by ‘liberty’ and Kymlicka simply does not begin to grasp what it is. He says, “Whenever someone says that we should have more freedom, we must ask who ought to be more free to do what from what obstacle?” And the clear libertarian answer is everyone ought to be more free (i.e., not proactively imposed on) to do whatever they happen to want to do (without proactively imposing,

²⁶ See, for instance, Benson 1990.

²⁷ Or is it possible that Kymlicka is here, also, partly confusing anarchy (no state power or rule) with anomie (no rules or laws)?

which is not part of liberty but license) primarily from the obstacle that is the proactive impositions of the state. He continues, “Whenever someone tries to defend the free market, or anything else, on the grounds of freedom, we must demand that they specify which people are free to do which sorts of acts” – everyone is free to do whatever sorts of acts do not proactively impose on others – “and then ask why those people have a legitimate claim to those liberties” – it is an unrefuted conjecture that such complete liberty is desirable – “i.e. which interests are promoted by these liberties” – the desirability of liberty is a conjecture that is not based on promoting any interests or anything else – “and which account of equality or mutual advantage tells us that we ought to attend to those interests in that way” – no account: neither equality nor mutual advantage is the conjectured desideratum, liberty itself is. Kymlicka concludes that “We cannot pre-empt these specific disputes by appealing to any principle or category of freedom as such.” Liberty as a conjectured ideology invites disputes. It is Kymlicka who cannot pre-empt this possibility by appealing, as he does, to justificationist epistemology and non-libertarian views of liberty.

“5. THE POLITICS OF LIBERTARIANISM”

And so we reach the final section on “the politics of libertarianism.” In a typical example of bias, Kymlicka writes that libertarianism “rejects the principle of rectifying unequal circumstances” (154). Why “rectifying”? Why put it as an apparent fact, in this introduction to contemporary political philosophy, that libertarianism refuses to put something right that has manifestly gone wrong? Libertarians are more likely to see it as refusing to lower liberty and welfare on the basis of some unsound theory of invasive equality. He continues, “Taken to the extreme, this is not only intuitively unacceptable” – even where true, arguments can show intuitions to be mistaken – “but self-defeating as well, for the failure to rectify disadvantageous circumstances can undermine the very values (e.g. self-determination) that the principle of respect for choices is intended to promote.” There is no vague “principle of respect for choices” in libertarianism. There is only a principle of liberty. We should not even say “respect for choices” that do not proactively impose on other people’. Because it is not about “respect”, but toleration – and toleration of *anything* that does not proactively impose, not just “choices.” Moreover, there are no values that libertarianism is “intended to promote.” This is simply justificationist confusion. But, in any case, libertarianism cannot “undermine” people’s “self-determination.” If someone is not being proactively imposed on by anyone else, then his “self-determination” is not being interfered with and so cannot be “undermined.”

Kymlicka’s moral excoriation continues:

The libertarian denial that undeserved inequalities in circumstances give rise to moral claims suggests a failure to recognize the profound consequences of such differences for people’s capacity for choices, agency, and dignity. (154)

To which a libertarian might reply, on the contrary, people have no impaired “capacity for choices, agency, and dignity” with a flourishing libertarian society. It is both being robbed by, and becoming dependent on, the paternalistic welfare state that takes away people’s real “choices, agency, and dignity.” The egalitarian view that inequalities in circumstances give rise to enforceable redistributive claims demonstrates a complete failure to recognize the profound consequences of such a policy for all people in terms of the undermining of their liberty and welfare.

This is not, as Kymlicka supposes, a “slippery-slope” argument which draws attention to the ever-increasing costs of trying to meet the principle of equalizing circumstances.” It is an argument about the immediate loss of liberty and welfare and then this loss increasing at a compound rate. It is

not viewing “the popular conception of equality of opportunity as unstable.” It is viewing it as impossible to realize and undesirable as a goal even to begin to approach.²⁸

Kymlicka gives what he regards as an “unproblematic” example of what is desirable here:

The attempt to equalize educational facilities – e.g. to ensure that state schools in predominantly black neighbourhoods are as good as predominantly white schools – does not impinge in an oppressive way on individual choice. (154)

Equality is, as usual, a red herring here. The provision of state schools impinges in the first instance on the choices of individual taxpayers to spend their own money as they wish. But the dire state-schooling also impinges on all the children that are subject to it.²⁹ This is because an efficient, thriving market in child education has been crowded out by right-wing paternalists like Kymlicka. He goes on to discuss more difficult issues without realising that even his “unproblematic” example is completely flawed.

Is it true that “It is inhumane to deny that unequal circumstances can create unfairness”? (156). Our moral intuitions, including fairness, probably evolved and were useful for survival when humans lived in small groups of close relatives. Understandings of fairness have even been displayed among other animals such as monkeys.³⁰ This suggests that fairness has survival value within families, or among close relatives or friends. However, there is no reason to think that this moral intuition can practically be applied to a wider society. To do so, and to impose redistributive policies on that basis, is to assume that a whole society’s circumstances can be equalised, or compensated for, without significantly reducing liberty and welfare. But that assumption is erroneous, because such imposed redistributions both restrict non-invasive liberty and disrupt the economic calculation and capital accumulation that an advanced economy requires.

Kymlicka admits that a lot of opposition to the welfare state is due to the fact that it is perceived to have failed. But he thinks that this “has very little to do with libertarianism in the philosophical sense” (157). Not many people have even heard of libertarianism, of course. Or not until Ron Paul, at least. But state failure is evidence that libertarians cite in recruiting new libertarians. And a move away from the state is a move towards libertarianism, whether “philosophical” or not. We are told, “Citizens in Western democracies have not en masse rejected the principles of liberal equality.” But it is not likely that state subjects embrace “the principles of liberal equality” in any “philosophical sense” either. Do people “en masse”, rather than most ideologues, even have a vague approval of “liberal equality”? Would they even be able to say what those words mean if asked? Most people don’t think about political principles much, as they know it wastes their time. Kymlicka is right to say that “the debate between right-wing and left-wing parties is not over the principle of protecting the vulnerable – that is not disputed by either side.” But that is because both sides share the same paternalistic right-wing principle.

We are then informed that

Unfortunately, the perceived failings of the welfare state have not only contributed to a dissatisfaction with traditional redistributive policies, but have also generated widespread distrust of the government’s capacity to actually achieve social justice. (157)

“Unfortunately”? Fortunately, more people are now not only distrusting the government “to achieve social justice” but are also beginning to trust the free market to achieve it. Fortunately, the scales are

²⁸ See “Equality of Opportunity” in Lester Forthcoming.

²⁹ See, for instance, West 1975 and 1994.

³⁰ Wynne 2004.

falling from people's eyes – but not Kymlicka's. He lists a number of so-called left-wing and right-wing positions:

- (a) ... If we redistribute money to the poor are we helping the victims of unequal circumstance (as the left tends to believe) or subsidizing expensive tastes and irresponsible choices (as the right tends to believe)?
- (b) has the welfare state helped the poor overcome their disadvantages and participate in society (as the left tends to believe), or has it created a class of welfare dependants caught in a poverty trap who are marginalized (as the right tends to believe)?
- (c) ... Should we insist that the poor prove they are capable of acting responsibly before they are eligible for assistance (as the right tends to believe), or should we equalize their circumstances before we hold them responsible for their choices (as the left tends to believe)?
- (d) does the state have the capacity to remedy involuntary disadvantage (as the left tends to believe), or are the sources of social ills like poverty, homelessness, high school drop-out rates, and so on so complex that state attempts to solve them will generally fail, and often worsen the problem (as the right tends to believe)? (158)

And he asserts that “none of the right-wing positions appeals to libertarian principles.” However, from the perspective of critical rationalism, there cannot be foundational libertarian principles. There is only the conjecture that non-invasive interpersonal liberty is preferable to state intervention. And, consequently, all these so-called “right-wing positions” are fully compatible with libertarianism. The manifest growth of self-perceived libertarian organisations in the UK and the US also refutes the idea that there has been no ideological movement towards libertarianism. The fact that political parties share some fundamental paternalistic principle does not gainsay this. Therefore, Kymlicka is completely deluded in thinking that libertarianism is a non-starter. This delusion exists mainly because he does not really understand libertarianism.

Conclusion

Kymlicka clearly wishes to refute libertarianism. But if one wishes to refute a theory it is first necessary to understand it. And one then needs to criticise it in its strongest forms. There are undoubtedly some versions of libertarianism that can be described using various combinations of the following positions: they do not have a proper theory of non-invasive interpersonal liberty; they attempt to justify libertarianism by some means; they conflate what liberty is with why liberty is desirable; they are not particularly concerned with the welfare consequences; they assume a state of some size. And for many of such kinds of libertarianism, some of Kymlicka's criticisms might well be sufficient to refute them.

However, some libertarians would also regard all those versions of libertarianism as hopelessly faulty and would happily criticise them. This is because they prefer what can, instead, be described using various combinations of the following positions: they do have a proper theory of non-invasive interpersonal liberty; they do not attempt the epistemologically impossible justification of libertarianism by any method, but seek and answer criticisms of the libertarian conjecture; they clearly distinguish what liberty is, and objectively entails, from whether liberty is valuable or moral; they are particularly concerned with the welfare consequences of the ideology; they are anarchists. And for many of such kinds of libertarianism, Kymlicka's criticisms are insufficient to refute them. And for a libertarian theory that is all of these, Kymlicka has, so far, not provided even one criticism of it.

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