Mid-Libertarianism: A Critique

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Abstract:

Mid-libertarianism is the new kid on the libertarian block. Torpman (2021) is critical of what he calls "classical libertarianism" and attempts to improve it with the introduction of his new perspective, "mid-libertarianism." The present paper maintains that the good, old-time philosophy of plain libertarianism is invulnerable to his criticisms of it, that his "mid-libertarianism" has problems of its own, and thus there is no reason to substitute the one for the other.

Key words: Libertarianism; mid-libertarianism; liberty; justice; private property rights; utilitarianism

1. Introduction

Professor Torpman starts off on the wrong foot with this opening paragraph:

> "The core idea of libertarianism, considered as a basic moral theory, is that people have certain negative rights and that those rights determine morally right action. Libertarianism is supposed to provide robust explanations to some of our intuitions, such as that it is wrong to steal, kill, rape or enslave other people. However, its exclusive focus on negative rights (i.e., rights to non-interference) makes it incapable of explaining some other intuitions, such as that the utterly rich should help the utterly poor. Although libertarianism can explain why we should never do bad to others, it cannot explain why we should sometimes do good to others. For this reason, libertarianism is not satisfactory as it stands. A natural suggestion, therefore, is that we should either abandon libertarianism in favor of some of its better faring rivals, or revise the theory in order to get rid of the features that make it unsatisfactory."

First of all, relatively minor point, while the libertarian philosophy does indeed concern itself with "moral theory," there is nothing "basic" about it, if "basic" means, or involves, something all-encompassing. Rather,

libertarianism concerns itself, only, with some small subset of morality, namely What is just law? Yes, to be sure, it addresses robbery, murder, rape, kidnapping, but has nothing to do with other issues of morality such as the virtue of charitable giving, respecting parents, self-harm such as drunkenness or suicide. Thus, to see a lacuna in libertarianism on the ground that it has limited application to overall morality is akin to calling into question the discipline of physics for having no views on Shakespeare.[1] Yes, libertarianism is not satisfactory as it stands; there is much more work theoreticians of this perspective need to do[2]. But one of them is not to artificially expand its field so as to take into account other realms of morality. There is thus no need whatsoever to "abandon libertarianism in favor of some of its better faring rivals" nor to "improve" it along the lines sketched out by Torpman.

But our author presses on and "proposes a new libertarian theory of morality: a theory that endorses a utilitarian proviso for use of external resources." He calls "this theory mid-libertarianism: … individuals are free to do as they want as long as they do not violate the rights of others, given that they maximize utility whenever they use external resources."

The present paper devoted to a rejection of this initiative of his, and a defense of libertarian theory devoid of "mid-libertarianism." However, I am not entirely critical of Torpman's initiative; he makes good points, and important contributions to ordinary libertarianism, despite his criticism of it. I follow the same organization here as he employs in his paper.[3]

2. Homesteading

Torpman relies heavily on the Lockean (Locke, 1689: Ch. V, §27) proviso as a foundation for his mid-libertarian theory. No, scratch that. Rather, his view depends entirely on this proviso for that purpose. But there is a problem with his formulation: most libertarians totally reject this "enough and as good"-proviso.[4] The point is, this is a recipe for non-ownership, while the ethos of libertarianism is that every square inch of the planet, including roads (Block, 2009) and bodies of water (Block, and Nelson, 2015) should

1 Well, that is a bit too extreme, but I can't help myself. Actually, it is more like blaming members of one sub-discipline for ignoring another. For example, macro-economists and micro-economists do not overlap too much; philosophers of free will have little to do with issues faced by theologians.

2 There is unclarity and divisiveness insofar as challenges such as immigration, voluntary slavery, abortion are concerned, for example.

3 All references to this author, unless otherwise specified, will be to this one essay of his, Torpman (2021)

4 For example, Block, 2016; Dominiak, 2017, 2019; Hoppe, 1993; Kinsella, 2009; Machan, undated; Mack, 1995; Makovi, 2015; Miller, 1987; Rothbard, 1998, 244-245.

be privately owned. But this cannot occur if homesteaders are required to cease and desist their activities once they have taken up all the choice parcels, and there is not "enough and as good" for latecomers. It matters not one whit how the remainder of the earth's surface is then parceled out; it will not be by homesteading, the be-all and end-all of libertarian law on converting virgin territory into owned parcels.

Torpman would accept this state of affairs provided, only, that this additional acreage be distributed in a utilitarian manner. The problem here is that libertarians have harshly and successfully criticized this doctrine as incompatible with the freedom philosophy.[5] One difficulty is the fallaciousness of making interpersonal comparisons of utility. It might be thought that due to diminishing marginal utility, taking money from a rich man and giving it to a poor one would increase overall happiness, since the former would get far less enjoyment out of the dollars taken from him than the benefits that would accrue to the latter from the transfer. But there is no warrant for any such conclusion which relies on the invalid concept of cardinal utility. Another problem occurs when we accept the validity of such interpersonal comparisons; then, we are confronted with the "utility monster" a cannibal who gains more pleasure from frying and eating the rest of us than we lose from being so treated. Talk about being "counterintuitive" one of his important concerns.

3. Utilitarianism

Nothing daunted, our author presses on with his contribution:

> "The Utilitarian Proviso: If an act involves the use of external resources, these resources should be used so as to maximize utility in a rights-respecting way."

He continues:

> "On this formulation, the utilitarian proviso does not apply to non-external (i.e., personal) resources, such as body parts or organs. Although it gives agents certain distributive obligations that require them to use their own bodies in certain ways, their personal resources are not themselves resources to be distributed. Thus, it does not require that one donate all one's organs, bone marrow, stem cells, blood, or etc., just because one eats an apple. Moreover, this formulation of the utilitarian proviso allows

5 Hoppe, 1989; Rothbard, 1997, 2002, 2010.

only for utility-maximizing acts that do not violate any rights."

But why only external resources? Why not, also, internal ones? Here is our author's explanation:

> "… this view would yield counterintuitive recommendations. For instance, since no agent can violate their (sic)6 own rights, it recommends that whenever we use external resources, we should donate all our money or spend all our time on helping those that are in greater need. Eating food, for instance, implies using external resources, which triggers the utilitarian proviso. And one of the acts that are available to me involves donating my organs to other people in need of such organs for their survival. Given that saving these other people would maximize utility, it is recommended that I do so – even if that would lead to my own death. This is utterly counterintuitive."

But this appears arbitrary, capricious, made-up-on-the spot. There is nothing in plain old libertarian theory, not "mid-libertarianism," that makes such a sharp distinction between internal, bodily resources (heart, spleen, kishkes) and external ones (trees, rabbits, land). Torpman feels compelled to rule out of consideration the former only because his theory leads, indeed, to "counterintuitive" results. But this is making it up as you go along. There is no rhyme or reason operating here. In ordinary libertarianism, there is no such division. It is a crime to steal someone's kidney as well as his car. Yes, philosophers should of course be free to present whatever theory that seems best to them. But this system seems unduly ad hoc and arbitrary.

4. Intuitions

We now arrive at the nub of this philosopher's contribution:

> "The main argument for mid-libertarianism is that it provides explanations to the rightness/wrongness of actions in a way that better accords with our intuitions than existing versions of libertarianism – or classical libertarianism, as I will refer to them hereafter. In this section, I will show this in two steps. First, I argue that mid-libertarianism, in virtue of its endorsement of the non-aggression principle, maintains the main explanatory powers of classical libertarianism. Second, I argue that mid-libertarianism, in virtue of its utilitarian proviso, avoids some of the main

6 There is a confusion between singular and plural here

objections that can be raised against classical libertarianism."

There are problems here. For one thing, the main virtue of "classical libertarianism"[7] has nothing to do with its "explanatory power." Rather, it is an attempt to get at the truth concerning just law. For example, a basic premise of "classical libertarianism" is that murder is a punishable offense. This "explains" nothing, any more than that a punch in the nose from A to B "explains" that A wishes B ill. Rather, this claim is an instance of justice in a legal system. If murder were not a punishable offense, that would be unjust. For another thing, classical libertarianism does not at all always accord with "our intuitions." For example, in the view of the overwhelming majority of people, even libertarians, blackmail should be a crime, voluntary slavery is illicit, and evictionism is not the proper solution to the abortion challenge. And, yet, there are good reasons to think that all of these anti-intuitional claims are correct.[8] If classical libertarianism were congruent with most people's intuitions, the Libertarian Party would be far more powerful than at present.

In the view of Torpman, "Libertarianism manages to explain in an intuitive manner why we are never allowed to use innocent people against their will…" This is not so. Consider the following case. A, B and C are all armed. A sneaks up, controls and hides behind B and starts shooting at C. B and C are entirely innocent. For some reason, B cannot turn around and plug A, the only criminal in this scenario. C cannot run away. The only way C can stop A from spraying bullets at him is to return fire at him through B's body. So, whether B murders C or the reverse, one of them is "allowed to use innocent people against their will."[9]

Our author claims that "Mid-Libertarianism Avoids the Main Objections Raised Against Libertarianism." He continues:

> "Some of the most troublesome objections to classical libertarianism are that (i) it demands too little from us, and (ii) it implies too strong private property rights to external resources.

7 This is a well-chosen phrase on her part

8 On blackmail, see Block (2013B), Rothbard (2004) Scalise (2000). On voluntary slavery: Andersson, 2007; Block, 1969, 1979, 1988, 1999, 2001, 2002, 2003, 2004, 2005, 2006, 2007A, 2007B, 2009A, 2009B, 2013A, 2014, 2015; Boldrin and Levine, 2008; Frederick, 2014; Kershnar, 2003; Lester, 2000; Mosquito, 2014; Nozick, 1974, pp. 58, 283, 331; Philmore, 1982; Steiner, 1994, pp. 232-233; 2013, pp. 230-244; Thomson, 1990, pp. 283-284. On evictionism: Block (2021)

9 Which one, B or C, is justified in shooting the other? On this see Alexander, 1993; Block, 2010, 2011, 2019; Clark, 2000; Otsuka, 1994, 2003; Rothbard, 1984; Statman, 2006; Thomson, 1991; Wasserman, 1987

> "What concerns (i), libertarianism says that we are never required to make any positive sacrifices for other people – even if they would die without our help. For instance, we are allowed to throw away our food when others are starving, and to burn down our houses and money just for the fun of it when others are homeless and poor. Mid-libertarianism, however, does not have these implications. Even though we are, on mid-libertarianism, relatively free to do what we want with our personal resources – such as our body parts – we are not as free to do whatever we want with external resources. Mid-libertarianism's utilitarian proviso for use of external resources requires that these resources are used in a utility-maximizing way. And that does not allow us to waste our food, or throw away other resources, if these could instead be given to others for better use."

5. Obligations

Mid-libertarianism imposes positive obligations upon us. "Wasting food" would be a crime under this regime, akin to murder, rape, theft. Anyone see any problem with that? From a deontological point of view, this is unjust. If we own the food, or the housing, we should be able to dispose of them in any non-*negative* rights violating manner we choose. If we are not allowed to do so, someone has stolen, or at least partially abrogated our rights to our food or clothing, and ought to be legally penalized for so doing. From an empirical or practical perspective, this nostrum is also fallacious. For the best way to eliminate starvation, homelessness, and other aspects of poverty is not through the welfare system,[10] but rather via free enterprise (Smith, 1776).

This scholar continues his critique of classical libertarianism:

> "… if you do not have my permission, classical libertarianism does not allow you to use my boat in order to save the lives of some drowning children."

Perhaps the most dramatic fictional example of this argument took place in the movie Dr. Strangelove, where the only way to save the entire world from a nuclear war was to shoot a coca cola machine.[11] One of the

10 Murray (1984) demonstrates that this program has led to the break-up of the poor family, increased crime, and thus promoted poverty, not stifled it.

11 Don't ask. Go see the movie. It is an excellent one.

characters said, in a horrified voice (paraphrase): "You can't do that! That's private property."[12] Neither example lays much of a glove on the system of laissez faire capitalism. Torpman's rendition of classical libertarianism is not exactly accurate. Rather than *not allowing* the boat to be used for this obviously important purpose, or the soda machine to be destroyed to that end, the proper rendition is: if you do these things you will be punished by law. So, in these emergency situations, all the actor need do is pay the penalty, which, presumably, will pale into insignificance compared to the benefits to be derived. There is no need to substitute mid-libertarianism for the classical version to deal, successfully, with these kinds of made-up examples. Classical libertarianism cannot be embarrassed so easily.

Our good professor then attempts to obviate obvious objections to his thesis. He writes:

> "Note that this does not mean that we are required to go out in other people's gardens and look for resources that could be used more productively – only the person who actually uses a certain resource is obliged to distribute that resource in order to maximize utility. In the boat case, you are thus not required to use my boat to save the children, yet you are permitted to do so."

His attempt is unsuccessful. If there are positive obligations to do good, to promote utility, why are we not obligated to peek into "other people's gardens" and do precisely that. Are there positive obligations or are there not positive obligations? If there are, then not only is the owner of resources obliged to do exactly that, but so is everyone else and his uncle required to do so in the same manner, and for the same reason. Classical libertarianism *allows* boat owners to use them to save drowning children, after all. We hardly need Torpman's variety of this philosophy to attain this goal. Also, presumably, if people are legally required to use boats for rescue purposes, they may no longer use them exactly as they wish in any non-invasive manner, then fewer people will purchase and operate boats. There will be fewer boats around[13] and as a result more children will drown. That is not very utilitarian.

6. Supposed flaws

Next, our author is intent upon demonstrating that "Mid-Libertarianism

12 Talk about non-intuitive

13 Less of everything will be produced, ceteris paribus.

Avoids Some of the Main Objections Raised Against Utilitarianism." And here I think he succeeds.[14] But my main quarrel with this author does not concern utilitarianism; rather, it involves his claim there are flaws in classical libertarianism. The same goes for his correct contention that "Mid-Libertarianism Maintains Some of the Explanatory Powers of Utilitarianism" apart from my objection regarding "explaining."

We arrive at another crux of this paper when Torpman engages in "Answering Potential Objections to Mid-Libertarianism." He does so under four headings. First, he asks, "Is the Utilitarian Proviso Really a Proviso?"

He maintains that

> "… there is nothing inconsistent with a theory (like mid-libertarianism) that endorses the self-ownership thesis, without endorsing the possibility of private appropriation of external resources in a sense that can generate moral ownership over those resources."

This is problematic. For human beings cannot survive without access to external resources, at least not for more than a few minutes. We will not count air as an external resource, since it is not a resource at all, given its non-scarcity in comparison with our needs. So we may freely inhale and exhale. Ditto for water. We can drink all we want, given the presence of so much H2O, relative to our desires for this substance. But that is just about it. We cannot feed nor clothe ourselves, and thus will be consigned to mass death within a very short time period, without access to resources external to ourselves. Nor will it do, at least not from a philosophical point of view, to just grab external resources. We want to be able to claim that it is just to do so. But this cannot be the case unless we are the proper owners of them. However, in Torpman's view, we can only own them all together, all of us. How, then, can any one of use seize as much as a single apple for our own selfish benefit? If we are really co-owners of everything, we have no right, as individuals, to just grab for ourselves whatever we want; we need the permission if not of everyone else, at least of a majority of all the people on the planet. This is clearly a recipe for the end of the human race.

Nor can we hide behind the response that "…any proviso-violation requires compensation." If we are to stick to our principles, and what are they good for if not to stick to them, compensation for proviso-violation is just not sufficient. If mid-libertarianism is to be a coherent, logically consistent

14 He very properly refutes the utility "monster" objection on the ground that mid-libertarianism admits of no rights violations, of which giving into this worthy would certainly count.

philosophy, it will not do to violate it with impunity, and then to pull back and compensate the victims for our violation thereof. This is not the way classical libertarianism operates. In any case, to whom is the compensation to be owed? To everyone else on the face of the earth? But they, too, are busily violating this proviso, that is, if they want to remain alive.[15] Are we all, then, to compensate each other for every transgression of apple eating? In that direction too, lies mass starvation, as this continual compensation to everyone else will make it just about impossible to survive.

7. Varieties

Torpman further explains the different varieties of "libertarianism" insofar as compensation is concerned:

> "On right-libertarianism, this means doing something that guarantees that those affected by one's appropriation of a certain resource will in the end be no worse off than they would have been had one not appropriated or used those resources. On left-libertarianism, this instead requires promoting equality to the same extent that an egalitarian distribution of the involved resources would have done. On mid-libertarianism, this requires performing some act that produces the same amount of utility as a utility-maximizing usage of the relevant resources would have produced."

Unhappily, he leaves out what he calls classical libertarianism, in which case no compensation is owed to anyone for, forsooth, using homesteading external resources.

Our author asks: "Isn't Mid-Libertarianism a Too Complex Moral Theory?" His answer: "Since mid-libertarianism combines libertarianism's non-aggression principle with a utilitarian proviso, it might appear to be a more complex theory than classical versions of libertarianism. And since simplicity is considered a virtue of a moral theory, one may object that mid-libertarianism is lacking in this regard."

Yes, yes, Occam's Razor is of value not only in the physical sciences, but also regarding our present concern, moral philosophy. However, this is only a venial sin, not a mortal one. Yes, simplicity is desirable, other things equal, but other things are not always equal.

8. Conflict

A greater criticism of mid-libertarianism on his part is that

15 If not, they cannot be relevant to our concerns.

> "… it yields conflicting verdicts. Consider the following example. An agent uses some external resources, the utility-maximizing usage of which would produce x utils. But instead of using them that way, the agent donates a kidney as compensation which produces x utils as well. When doing so, the agent no longer has any moral obligation to redistribute these external resources so as to maximize utility. As this means, the agent is free to keep them for herself. However, … agents are allowed to use others' external resources if they use them in a utility-maximizing way. For instance, you are allowed to use my boat in order to save some drowning children. Thus, there seems to be a conflict between the permission of one agent to keep a certain resource for herself, and the permission of other agents to use this resource in order to maximize utility."

This is by far a more serious drawback to the philosophy than complexity. Torpman tries to rescue his view as follows:

> "First, the conflict at issue is not a principled conflict. It would be a principled conflict only if the permissions at issue were considered as rights belonging to the respective agents. If one person has a right to a certain resource, this implies that other people may not use it without that person's consent. But no such rights are sanctioned by mid-libertarianism. That one agent has a permission to keep a certain resource for herself does not exclude that other agents also have a permission to use this resource. Hence, the conflict is merely practical. Similar practical conflicts are yielded by other versions of libertarianism too, at least in cases regarding appropriations of external resources. For instance, two agents who are about to appropriate a certain previously unowned piece of land are both permitted to take the land."

I cannot see my way clear to thinking that this defense succeeds. After all, a conflict is a conflict is a conflict. It is a serious flaw that a philosophy should not deliver a clear answer as to what is consistent with it and what is not. In contrast, I can think of only one such lacunae in classical libertarianism: if two people attempt to homestead the very same item at the same time, given that it cannot accommodate both of them nor can it be equally divided. The only example that comes to mind is two swimmers on the verge of drowning who come upon a plank of wood sufficient to support only one of them. But this would be rare indeed. In contrast, the

conflicts facing mid-libertarianism, as even Torpman admits, are everyday occurrences.

9. Practicalities

Our author's second attempt is that

> "… both mid-libertarianism and classical versions of libertarianism can avoid such practical complexities. Since they commonly prohibit rights-violations, they prohibit agents to intervene in other agents' ongoing use of resources, given that such an intervention would violate the rights of those agents. Thus, they imply a recommendation along the lines of a 'first come, first served'-rule. Given that the notion of 'rights-violation' is determined partly by the notion of "consent" (recall that a rights-violation is a non-consensual boundary-crossing), both theories moreover allow for negotiation to play a role in cases of practical conflict. Mid-libertarianism would also imply that a person who can produce more utility out of a certain resource-usage in a certain situation is morally permitted to such usage in that situation, whereas others are obliged not to use these resources themselves in that situation (since, for them, not using them would be the best way of using them in such cases)."

My response is that both mid and classical libertarian are vulnerable, in the extremely rare case of an exact tie, to the "first come, first served"-rule that both of them share. There is nothing to be chosen between the two on that particular matter. However, the well-known flaws in utilitarianism of the former, given cardinal utility and the impermissibility of interpersonal comparisons of utility, must render a judgement in favor of the latter.

Next, this philosopher attempts to defend his view against the objection that it constitutes a suicide pact:

> "… it … demands that we give away most of the external resources we possess. For instance, when I eat food I obviously use that food. And since food is an external resource, mid-libertarianism requires that I use it in a utility-maximizing way. Given that eating the food myself is worse than giving it away to the poor, mid-libertarianism recommends that I do not eat it myself. As this seems to hold for any instance of food-eating, mid-libertarianism seems to imply that I starve myself to death. This is counterintuitive."

How does he try to rescue his perspective against this powerful critique?[16]

> "Although eating is an act to which the utilitarian proviso applies (in virtue of being an instance of external resource-usage), giving one's food away to the poor at every meal will most likely not maximize utility. If you give it all away to the poor, you will soon become unable to do other good things in your life. And this effect is certainly relevant to the ranking of your available distributions of that food with regard to utility production."

This is a nice try, but no cigar can be awarded. Alright, it is not required for the consistent adherent of mid-libertarianism to starve himself to death. But, from the vantage point of the presumed much more needy poor to whom he supposedly owes an obligation, he should treat himself like a slave: eat only gruel which will preserve his life, to be sure, but will not be fulfilling, so as to maximize benefits for the less fortunate. If that, too, is not "counterintuitive" then nothing is.

10. Left libertarianism

Next, our author raises the question of "Why Not Left-Libertarianism Instead of Mid-Libertarianism?" He continues: "There are several versions of left-libertarianism discussed in the literature. What is common to them all is the view that external resources initially belong to everyone in some egalitarian manner."

The difficulty I am having with this train of thought is that I find it almost impossible to distinguish left from mid-libertarianism. The latter seems to be but one variant of the former. Both tend in the direction of egalitarianism, and not the voluntary variety (private charity) either. Both play fast and loose with private property rights in that they embrace, albeit to different degrees, for different reasons and with different justifications, the highly problematic Lockean homesteading proviso. To be sure the former does so only implicitly (it places restrictions, imposes positive obligations on what people may do with their own property), while the latter does do very explicitly (it interferes with their ownership of virgin territory in the first place), but at the end of the day both deviate from classical libertarianism

16 This author is to be congratulated upon his willingness not to sugar coat his viewpoint; rather he subjects it to withering criticism. There are no straw men for him.

in that property owners are less free than they would otherwise be.

11. Conclusion

I congratulate Torpman for his attempt to create a new version of libertarianism. We can all do with more liberty, and more libertarianism. But I cannot agree that this is an improvement on what he calls classical libertarianism. As for me, give me that old-time libertarianism.

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