

Libertarianism by Eric Mack (Medford, MA: Polity Press 2018)
Review by: Jeffrey Carroll, University of Virginia

There are many ways individuals come to libertarianism. Perhaps one reads Ayn Rand's *Atlas Shrugged* or stumbles into a Students for Liberty meeting. While common basins of attraction, libertarianism would be on much firmer footing if future introductions came by way of Eric Mack's masterful *Libertarianism*. For those interested in understanding libertarianism, I can think of no better place to start. The aim of Mack's book is not to state his preferred conception of libertarianism and defend it from potential criticisms. For that, one can look to the numerous articles Mack has produced over his career.¹ Rather, this book offers a systematic treatment of libertarianism, covering its historical antecedents and contemporary incarnations. This book is not for Mack, but for *us* – the readers. Even those intimately familiar with the thinkers discussed will benefit greatly by reading Mack's presentation. The argument reconstructions and critical commentary serve as a model for how to do philosophy well.

Libertarianism is divided into five chapters and one online bonus chapter. The first is an introduction. The second looks to significant non-contemporary philosophers – namely, John Locke, David Hume, John Stuart Mill, and Herbert Spencer – to raise and consider themes central to libertarian thought. Chapter three hops forward in time to the views of two of the most prominent recent libertarians – Robert Nozick and F.A. Hayek. The fourth chapter covers the relationship between economic justice and property rights. For those not faint of heart, the online bonus chapter sees Mack assess significant developments in libertarian thinking since the writings of Nozick and Hayek in the 1970s. The fifth chapter takes up objections to libertarianism coming from both inside and outside the libertarian tent.

Chapter 1 begins with conceptual analysis. While a less careful thinker might use 'libertarian' and 'classical liberal' interchangeably, Mack distinguishes the two. Libertarianism is the "advocacy of individual liberty as the *fundamental* political norm" and it "maintains that respect for one's liberty is the basic moral demand that each individual can make against all other individuals and groups."² Classical liberalism is slightly less ambitious and maintains "that respect for individual liberty is at least the primary political norm."³ Both fall on the same end of the ideological spectrum, but the former is more full-throated than the latter.

Mack's focus is on libertarianism. But libertarianism is not a homogenous monolith and can be defended from different methodological presuppositions. Mack identifies two main ways of defending libertarianism as well as a possible, though ultimately untenable, third. The first route to libertarianism commences from a commitment to *natural rights* which are "basic moral rights that must be respected by all other persons, groups, and institutions" and are grounded in "certain deep truths about human beings and their prospective interactions."⁴ The second follows from a belief that "general compliance with certain principles of justice engenders a cooperative social and economic order that is advantageous to all."⁵ Mack labels this general justificatory strategy

¹ Some of my personal favorites include: Eric Mack, "In Defense of the Jurisdiction Theory of Rights," *The Journal of Ethics* 4, no. 1–2 (2000): 71–98; Eric Mack, "Hayek on Justice and the Order of Actions," in *Cambridge Companion to Hayek*, ed. Edward Feser (Cambridge: Cambridge University Press, 2006), 259–86; Eric Mack, "Elbow Room for Rights," in *Oxford Studies in Political Philosophy*, ed. Peter Vallentyne, David Sobel, and Steven Wall, vol. 1 (New York: Oxford University Press, 2015), 194–221.

² Eric Mack, *Libertarianism* (Medford, MA: Polity, 2019), 1. Emphasis added.

³ Mack, 3.

⁴ Mack, 4.

⁵ Mack, 4–5.

cooperation to mutual advantage. The third is *utilitarian*; specifically, an indirect version which holds that the greatest happiness is best pursued “through steadfast compliance with certain constraining moral norms” which are “pretty much the same constraining norms that are celebrated by the natural rights and mutual advantage approaches.”⁶ Mack treats the indirect utilitarian route as ancillary because concerns about “greatest happiness” must fade into the background and the constraining norms must be extensive and robust in order for the position to be “libertarian-friendly”.⁷

Chapter 2 transitions to historical analysis. Mack uses the familiar forefathers of libertarianism – Locke, Hume and Mill – as well as a frequently underappreciated figure – Spencer – as figureheads of the three different justificatory themes of libertarianism.

Locke represents the *natural rights* animating theme. “The keynote claim”, Mack says, “of the *Second Treatise* is that each person possesses a natural moral right to freedom – a natural right to live one’s own life in accord with one’s own choices.”⁸ Locke does not merely assert these natural rights or appeal to God to ground them as a superficial reading might have it. He argues that they follow from a pair of facts about humans. The first is that everyone seeks personal happiness and it is rational to do so. The second is that all humans have the same moral standing.

These two facts make it possible for Locke to offer three arguments for the natural right to freedom. The first is *the generalization argument*. If A, which has moral status h, makes a claim, c, against B, then A must recognize the authority of c when made by all others with h. To generate a conclusion supporting a natural right to freedom, one such c must be freedom from interference. On the assumption that every person will be rationally motivated to make this claim, the result will be a universal recognition and affirmation of freedom from interference, which is to say a *right* to freedom from interference. The second is *the non-subordination argument*. The only justification, besides agreement or provocation, for A harming B is if B is naturally subordinate to A. But neither B – nor C...Z – are subordinate to A in virtue of all humans being “equal and independent.” Hence, agreement and provocation are the only possible justifications for A harming B. Finally, Locke offers *the preservation of mankind argument*. It is a fact that A is bound to preserve A’s self and each other human being is “by like reason” bound to preserve their self. The proper response to this fact by A is to self-preserve and for A to not impede others attempts to self-preserve. The human aim of self-preservation gives each reason to constrain behavior in certain ways, namely, not hindering the ability of others to self-preserve in the way they see fit.

Mack goes on to discuss Locke’s account of private property, the state of nature and its relevance to political authority, and his defense of toleration. As will surprise no one, Mack’s coverage of Locke is absolutely first-rate.

Hume represents the *cooperation to mutual advantage* animating theme. Hume’s theoretical starting point is that individuals lack a *natural* desire to comply with the principles of justice. The principles of justice must generate their own support. The lone natural motivations are selfishness and limited generosity, which look more like obstacles, than aides, to cooperation. For Hume, the principles of justice are regulatory principles. They allow us to live and play well together. The first principle prohibits one from confiscating someone else’s possession. The second permits transferring possessions, but only when it is mutually agreed upon. The third rule demands that individuals not shirk on voluntarily-made agreements. General compliance with

⁶ Mack, 5.

⁷ Mack, 6.

⁸ Mack, 10.

these principles makes possible a mutually advantageous existence for individuals who deeply disagree with one another.

Mill and Spencer are the exemplars of the *indirect utilitarian* animating theme. The general strategy is to show how a commitment to utilitarianism can allow for and ultimately support a robust form of individual liberty. But this is no easy task given the priority of ends within utilitarianism. The utilitarian needs either all the disparate ends to coincide with what maximizes aggregate utility such that individuals genuinely want to do what produces the greatest happiness (even when it comes at a personal cost), or for it to be the case that the utility of indefinitely protecting certain liberties outweighs the utility present in a world in which those liberties are not steadfastly protected. Given the former requires extensive paternalism, Mill favors the latter. The way to maximize utility is to never fail to protect the relevant liberties, thereby, providing security.

Mack's inclusion of Spencer, who often goes unappreciated, is noteworthy. Spencer is skeptical that one can know what action will yield the greatest happiness. Instead, the focus should be on general principles. If the right principles are identified and complied with, happiness will be maximized as the right principles will allow individuals to best realize their own conception of happiness. For Spencer, the right principle is *the law of equal freedom* that establishes that one is free to do as one wishes up to the point that it infringes of the equal freedom of another. From the law of equal freedom, Spencer derives more specific rights like the rights of life and personal liberty, the right of society to the Earth, and the right to ignore the state.

Chapter 3 concerns Nozick and Hayek's, respective, base case for libertarianism. Nozick believes the path to libertarianism is paved by a defense of a robust set of rights. Mack offers a rational reconstruction of Nozick's case for select individual rights and maintains that Nozick's argument is stronger than Rawls' contractarian project. In *A Theory of Justice*, Rawls criticizes utilitarianism and then offers his contractarian alternative. The problem with utilitarianism is that the principle of social choice is viewed as an extension of the principle of social choice. The reason this is a problem is because it "fails to recognize the fundamental difference between individuals and society."⁹ It is important that the entity deciding incur the cost or receive the benefit that follows from deciding. Utilitarianism requires treating society as a fusion of individuals. But society is not a fusion of individuals as there is no entity that incurs the costs or receives the benefits. For Rawls, separateness of persons (SOP) is not just the basis of a criticism of utilitarianism. It is a desideratum on moral principles. What indicates that a set of principles, p, satisfies this desideratum is that p would be agreed to by all relevant parties in an ideal choice situation.

With respect to SOP, Nozick's natural rights account is superior, says Mack, to Rawls's contractarian account. Nozick holds that embracing SOP entails rejecting moral balancing, which is wrong as a result of failing to take seriously individuals as rational project pursuers. Moral side constraints – which one possesses on the basis of moral status, not on value-based reasons – prevent individuals from being part of a moral balancing act. As Mack nicely summarizes the point, the "deep feature of libertarian thinking is that the value of each person's happiness or well-being does not mean that everyone has enforceable obligations to promote everyone's happiness or well-being."¹⁰

Mack identifies two main reasons why Nozick's natural rights position has greater plausibility than Rawls's contractarian project. The first is that Rawls's project makes the rights individuals have dependent on (all) others finding reason to agree to ascribe that set of rights. The

⁹ Mack, 42.

¹⁰ Mack, 51.

second is that it depersonalizes, in the form of veiling particular details, individuals in the original position which results in the decision about the principles being made without respect to the diversity of ends had by actual individuals. Concern with SOP falls out.

The treatment of both Nozick and Rawls is excellent. But I am less than completely clear about what Mack's contention is. In a general sense, it is that Nozick's argument is better, with respect to SOP, than Rawls's. But it is unclear to me what the unit of analysis is. In what respect is it better? In one place, Mack says the issue is about "justification" and, in another, about "plausibility."¹¹ Ultimately, I think comparing Nozick and Rawls with respect to SOP is not really a relevant comparison. We should not be surprised that Nozick does better – whatever that means – with respect to SOP. Rawls is not aiming to have the "most" SOP possible. Rawls, on my reading, cares more about non-arbitrariness. SOP is a sort of methodological bulldozer. It clears the theoretical space by ruling out utilitarianism. Then he can construct a theory which has its foundation a commitment to non-arbitrariness. And this can be done in a way that is consistent with SOP. For Rawls, separateness is just one desideratum. The relevant question is whether Rawls's account can satisfy it. I read Mack's two closing points as suggesting that it does not decisively do so. But Rawls's positive position does not *follow* from the separateness argument in the way that Nozick's positive position does, so the fact that Nozick's account does better with respect to separateness is not really a strike against Rawls.

Next, Mack turns to Hayek's contributions to classical liberalism. Among the most significant being his distinction between top-down order and law and ground (or bottom) up order and law. The former are a product of some organizer's dictates, while the latter are *emergent*. The distinction between top-down, designed orders and bottom-up, spontaneous orders is of fundamental importance because "the core social scientific error that has undermined the cause of liberty is the belief that desirable social and economic order must ultimately be designed and imposed by legal commands."¹² Abstract rules emerging from the bottom-up play an important role in Hayek's story because the evolution of these rules is a core driver of social progress. Compliance with the rules allow for individuals will diverse ends to live peaceably together. So, Mack reads Hayek as giving "a *mutual advantage* justification for compliance with the rules."¹³ An exercise for a longer piece would be to place additional weight on *The Constitution of Liberty* and construct the indirect utilitarian case.

Chapter 4 addresses issues of economic justice and property rights through Nozickian and Hayekian lenses. Both put forward a version of the libertarian objection to economic justice that there is no "best" income or wealth distribution that the state is justified in coercively intervening to bring about. Nozick identifies a fundamental tension between patterned distributions and liberty. Mack makes clear that it would be a mistake to read Nozick as concluding straightforwardly from this tension that liberty is to be preferred because the patterned distributionist could assert a similar preference for patterns. Rather, Mack presents a case that generates a sort of internal inconsistency for the distributionist as a result of individuals putting their distributed resources to work. This necessitates that the distributionist endorse "continuous interference with *people peacefully doing as they choose with what has been declared to be their just holdings*."¹⁴ This is a big bullet to bite.

Hayek offers an assortment of anti-distributionist arguments. For argument-first philosophers, this is one of the best distillations of Hayek's thought I have encountered. The

¹¹ Mack, 42,54.

¹² Mack, 65.

¹³ Mack, 72.

¹⁴ Mack, 87.

Meaningless Argument suggests that it is a category mistake to describe an order as just or unjust. The *Desert is Unknown Argument* makes the case that coercive institutions lack the epistemic ability to distribute according to desert. The *Desert as Contribution Proposal* holds that the free market allocates in a just way because it does so in accordance with the contributions one makes. One deserves the fruits borne by one's contributions. The *Signal Argument* holds that a patterned distribution would fail to signal to individuals what economic activities it is worth further attending to and to which activities it is less beneficial to attend. The *No Authority Argument* contends that distributionism requires that society be organized such that there is a social authority to articulate the relevant distribution which is determined by what each deserves, but there is no entity with that type of authority. Finally, the *Political Dynamic Argument* maintains advocates of social justice will disagree about the proper distribution and political realities incentivize the various advocates to join forces to bring about a distribution closest to one's preferred distribution. The resulting tribalism creates a problematic political dynamic. Ultimately, Mack expresses skepticism about the viability of many of these arguments.

The online bonus chapter is best read between Chapter 4 and 5, and, it considers some of the most important recent developments in libertarian thought. For reasons of space, I will not be able to give these important thinkers the attention they deserve. But I would strongly encourage readers to not overlook it. Mack covers Steiner's work on left-libertarianism, Lomasky's Humean theory which emphasizes the importance of people being project pursuers, Rasmussen and Den Uyl's Aristotelian account that brings meta-norms to the forefront, and Schmidtz's pluralist, indirect consequentialism that combines desert, reciprocity, equality and need into a moral framework. Mack's own voice comes out especially clear in his discussion of the potential problems with Steiner's left libertarianism and Schmidtz's pluralist, indirect consequentialism. Mack powerfully expresses worries about the "left" in "left libertarianism" and with the way broadly consequentialist approaches garner general compliance.

In Chapter 5, Mack assesses both internal and external challenges to libertarianism. The issue for those inside the libertarian tent is how much "state" is justifiable. While Mack rightly notes that those like Hayek and Lomasky (and I would add Gaus and many in his philosophical lineage) endorse a Taxation *Semi-Minimal* State, the three options for libertarians (as opposed to, say, classical liberals) are Market Anarchism, the No Taxation Minimal State, and the Taxation Minimal State.¹⁵

The external objections considered come from Rawls, Murphy and Nagel, and Cohen. Rawls worries that libertarianism fails to properly acknowledge the basic structure, but Mack responds that Rawls's own account of the basic structure supports not indefinitely intervening to achieve some desired distribution. Next, Murphy and Nagel object to libertarianism on the ground that libertarianism maintains that individuals deserve all their pre-tax income, but this fails to acknowledge the role a stable state played in allowing individuals to earn said income. Mack demonstrates how a natural rights theorist, attentive to concerns of convention, can circumvent the charge waged by Murphy and Nagel. Finally, Cohen objects that libertarianism creates a society of individuals that fail to embody the relevant sort of community – like the kind found on a camping trip. Mack decisively demonstrates that Cohen's conception of community is flawed as it unjustifiably requires rough equality and the scope of community has to be all-inclusive, an unduly expansive condition.

In his review of Lomasky's *Persons, Rights, and the Moral Community*, Mack described the book as "Readable, entertaining, and far too full of moral truths to be confined to the artificial

¹⁵ For the complete discussion of the options of the continuum, see Mack, 110–24.

world of the academic.” I can think of no better description of Mack’s own book. The state of libertarianism will improve as Mack’s book transcends the confines of “the artificial world of the academic” and becomes the way future generations come to know libertarianism.