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Marius S. Ostrowski

Magdalen College, University of Oxford, Oxford, OX1 4AU, UK


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Towards libertarian welfarism: protecting agency in the night-watchman state

MARIUS S. OSTROWSKI

Magdalen College, University of Oxford, Oxford, OX1 4AU, UK

ABSTRACT One of the major debates within libertarian thought concerns the need for a centralized state structure to sustain the norms governing agents’ behaviour in society. Minarchists support state monopolies over the means of coercion to ensure that society abides by these norms, whereas free-market anarchists consider such monopolies damaging and unnecessary, with norms maintained by agents’ natural motivations. This article finds that the libertarian ‘pre-political’ principles which free-market anarchists adopt lack objectivity and plausible independence, creating a fundamental tension between the endorsement of a libertarian morality and anarchist commitments to pluralism of legal and political structures. It suggests that libertarians place a core, shared value on individual agency, but that this value can only be universalized through political processes of discussion and agreement, and sustained only in the presence of institutional sanction and coercion mechanisms. This article argues that libertarian commitments to agency require such mechanisms to be welfarist and minimally state-like, and proposes various ways in which the appropriate structures and policies could be realized, stressing the continuity of this novel form of libertarian welfarism with the aims and underlying values of both sides of the libertarian debate.

One of the core debates in libertarian thought centres on the degree to which a centralized state structure may be desirable or necessary to sustain the norms that govern engagement and interaction between agents in a free-market society. On one side, minarchists, or ‘limited-government libertarians’, support state monopolies over the means of political and social coercion—the military, the systems and structures of legal arbitration, and the mechanisms of legal enforcement—as a way of ensuring that society abides by these norms. By contrast, free-market anarchists and anarcho-capitalists hold that such monopolies are...
detrimental to the core libertarian norms, and instead advocate full competition between voluntarily funded forms of each of these services—with the maintenance of norms ensured by the ‘natural’ motivations of individual actions in the market, and by private law.1

This article takes the view that there are fundamental tensions between the free-market anarchist commitment to competition2 between legal and political structures and any endorsement of a single, overarching (libertarian) morality.3 Specifically, it argues that none of the generalized ‘pre-political’ principles adopted by free-market anarchists to achieve this aim constitutes objective morality as anarchist thinkers suppose—and thus offer neither a convincing pre-societal sociology of agents nor a satisfactory basis for the independent legitimacy of libertarian norms (Section 1). It suggests that libertarians subscribe to a universal principle of respect for individual agency as a core value, which cannot be successfully reached and sustained by societal processes that are clearly and recognizably prior to the establishment of political institutions (Section 2). In this light, the existence of substantive principles that underpin and govern a libertarian society is contingent on agential agreement, which would require both a forum in which the principles can be discussed and determined and a political mechanism to ensure that they are maintained (Section 3). From this, the article argues that the particular nature of libertarian commitments to agency necessitates a conception of such a political mechanism as welfarist, and minimally state-like—and proposes ways in which a libertarian conception of such a structure could be realized, taken in part from outside libertarian ideology (Section 4). Finally, it stresses the continuity of this libertarian welfarism with the aims and underlying values of both sides of the libertarian debate, adopting an overarching position external to, but sympathetic towards, the aims and values of the wider family of libertarian ideologies (Section 5).

1. Objectivity and the libertarian telos

Before beginning an assessment of libertarian attitudes to political and legal monopoly, one must consider the various rationales offered in support of the libertarian underpinnings of unitary social morality, which both free-market anarchists and minarchists endorse. These are loosely separable into deontic and consequentialist types, with further hybrid alternatives combining different aspects of these two extremes.4 Broadly, libertarians are committed to an agent-enabling, individual-focused view of morality: self-ownership, requirement of stringent justification for coercion and some form of right to property ground a conception of freedom that is closely associated with unforced choice between a wide variety of rival options and control over one’s own actions and self-development.5 Though libertarians differ on the substance of these commitments, they are broadly united in treating them as naturalistic moral principles, inherent in human behaviour, with their universal validity and applicability argued for on the basis of generalizable human attributes. This section’s task is thus twofold: (1) to
examine and rebut the libertarian claim that their morality exists in an objective, pre-political meta-utopian space that cannot be affected by coercive structures, and to argue instead that subjective variations in moral thinking are more diverse and pluralist than libertarianism can countenance; and (2) to suggest that libertarian conceptions of morality imply a telos, or goal, of ‘protecting agency’ that goes beyond merely valuing liberty.

Deontic justifications for libertarianism usually rest on appeals to a form of liberal natural-law theory, specifically to pre-political or meta-normative obligations to respect and safeguard individuals’ ‘natural’ or ‘basic’ rights. Typically, libertarians take a variant of the Lockean conception of natural rights to ‘life, liberty, and estate’, subsumed into Locke’s particular definition of ‘property’ as self-ownership, as a moral foundation—with the addition of appeals to objective, ‘practical’ human reason as the way in which natural rights are ‘discovered’. One significant problem with this foundation for liberty and voluntarism is that it embodies a perfectionist, idealized conception of how agents behave when engaging interactively or transactionally. Agents are highly unlikely to meet the demanding criteria for full cognitive self- and context-awareness and evaluative competence, which the reliance on reason implicitly assumes—and, crucially, it is unclear to what extent the locus of such rational thinking is objective in the sense of being external to agential subjectivity. Moreover, agents will not conform completely or consistently to either the self-focused rationality or the quasi-altruistic respect for others that forms the extremes of libertarian sociology; ethical and political thinking develops and changes over time, based on agents’ reactions to external stimuli, and it seems deeply unlikely that every possible facet of agents’ thinking will unerringly lead back to a commitment to natural rights. With more modest behavioural assumptions, it is unclear to what extent subjective reason could support a thick moralization of society and individual behaviour. If libertarians concede that reason is dependent on subjective agential thinking and perspective, they cannot explain why all agents should settle on a given, fixed set of meta-normative commitments, and how these are then externalized to a position of pre-political objectivity.

Deontological libertarians are also guilty of somewhat arbitrary selectivity in their very specific use of liberal natural rights theory to ground their ethics, as opposed to (for instance) Stoic or Thomist accounts. Even within the liberal framework, no reason is given why it is these Lockean rights that are ‘natural’, rather than (for instance) the Hobbesian right to self-preservation or the Lockean right to charity, nor is it explained why liberty and property are classed not merely as non-moral abilities or capacities, but as moralized rights with correlative binding obligations. Further, the deontic justification falls foul of the is-to-ought controversy: the libertarian ‘market’ model of how agents relate to one another in a social setting offers an aggregation of what agents do, however, imperfect or unreasoned their actions, not a signal of what is ‘fair’ or ‘just’, i.e. what ought to be done. That a given set of agents happen to interact in a given way—by criteria of wealth, preference, rights, unimpeded exchange, etc.—in a particular instance or context provides no indication that they (or others) should transact in this way in...
general. More broadly, there is a universalism inherent in deontic appeals to objectivity (of reason, of natural rights and of a market mentality) that is at best ambitious, at worst baseless. Libertarian commitments to choice and competition ring rather hollow if they only apply to a narrow, bootstrapped conception of agency that abstracts away the significant role of subjective differences in preference- and choice-formation—particularly when it is arguably this subjectivity and potential for variation in perspectives that makes individual agency worth safeguarding.

By contrast, consequentialist arguments for libertarianism (normally in the context of free-market competition) rest on the assumption that the choice and pluralism that libertarianism provides will tend strongly towards improving the quality and variety of goods available in society, which are generally treated as ciphers for the extent to which goods successfully (and, in some theories, efficiently) satisfy agents’ needs or wants. An initial criticism of this approach is the limited and imperfect ability of agents—even external observers—to assess the causal outcomes of choice and pluralism. The conditions identified in libertarian arguments as reasons why variety, qualitative improvement, efficiency and desire-satisfaction will result from pluralism and competition are not inevitable or absolute. Divisions between producers and consumers—including misreading of preferences/signals, power imbalances and divergences of interest—and the generally excessive reductionism of treating desires as satisfiable purely by material means will, at least, decrease the strength of the tendency from competition and pluralism to their alleged positive effects. In extreme cases, with (inevitably) limited knowledge, some form of first-mover advantage, and producer monopsony over productive resources, an unwavering libertarian commitment to freedom of choice of action within a market society model may degenerate into the sort of corrupted capitalist political economy revealed by the current global economic and financial crises. Instead of strengthening bargaining positions, or leading to more appropriate allocations of resource endowments (i.e. property/wealth, power and legal status protection), the steadfast libertarian refusal to modify or mitigate market activity may lead to, for example, the ‘dumping’ of homogenized products as quantity competition for market share, the emergence of specialist and geographic monopolies or a steady stratification of market agents according to their scope for political-economic participation.

Moreover, even if the goods available are qualitatively superior, this does not translate into an indication of unequivocally greater moral desirability. Free competition in a market-type model may produce a wide array of goods whose mere existence could be seen as antithetical to the fundamental principles of libertarianism. If, as the earlier analysis implies, libertarianism cannot rely on an external meta-normative framework to guide agents’ practices of production, consumption or transaction, the market is reduced to a situation where ‘anything goes’. This is obviously compatible with the emergence of objects, exchanges and resources whose use or purpose threatens core libertarian values—as explored extensively by Walter Block. Parallel to this, as with other moral systems, it is unclear from this account why variety, desire-satisfaction, efficiency and quality
are valuable qua se, or why they are prior to other possible considerations, such as social utility, power distribution or the rejection of a consistent societal morality. In the absence of objective morality (again), libertarians fail to provide a case not only for the universal applicability of their aspirations at all times and in all contexts, but also for how and why they have come to hold such importance and value at all. Finally, by extension, the consequentialist justification raises a further subjectivity problem: it is implausible that all agents consider any particular criteria to be key determinants of the ‘goodness’ of a market, since it is possible to imagine radical and pronounced competitive disagreement between agents regarding the value-criteria by which they expect the market to abide. The recognition of agential subjectivity inevitably creates the potential for profoundly different interpretations of how aspirations—whether in this libertarian form or otherwise—are to be measured and achieved. It is thus conceivable that, despite allowing agents far-reaching freedom to choose their moralities and idea-systems, libertarianism might prove an inappropriate overarching meta-utopian structure for those societal communities-of-value that see little merit in the ends libertarianism purports to achieve.

Before moving onto an assessment of free-market anarchism and minarchism, it is worth briefly exploring the aim of libertarian commitments to liberty, choice, non-coercion, self-ownership, and property, and their aspiration to quality, variety and individualized preference-satisfaction. ‘Aim’ here refers to the non-consequentialist good that both forms of justification for libertarian morality treat as an unambiguously desirable goal—the telos in the Aristotelian sense that gives libertarian ideologies their distinctive family resemblance, following Rasmussen and Den Uyl. A strong candidate for the libertarian telos is ‘protecting agency’, which (1) results from the safeguarding of liberty, choice, non-coercion, property and self-ownership; and (2) is embodied in the concern for quality, variety and preference-satisfaction. Libertarians adopt their value-commitments on the basis that self-ownership, liberty, etc. enable individuals to exercise meaningful control over, and take substantive responsibility for, every aspect of their individuality—from the inception of ideas and formation of preferences to their translation into external actions, and their consequences—intended to achieve ‘self-perfection’ through ‘self-direction’. It is thus important to recognize that, while some libertarians may see intrinsic value in several of these values—liberty being perhaps the most obvious candidate—it is their instrumental value as presumed means to increased agency that leads to their incorporation into libertarian morality. This, then, is the reason for the various libertarian drives for diversity, efficiency, quality and the satisfaction of individual preferences: a society in which inter-personal transactions run smoothly and without interference, and where goods are provided to suit any and all preferences and viewpoints, honed through competitive attrition to provide the best value-for-cost, is—according to libertarians—the one most likely to achieve agency protection.

However, a definition of ‘agency’ that is broad enough to fit the full gamut of available libertarianisms cannot be restricted to merely a combination of autonomy and freedom from constraints—a full analysis of agency must move beyond the
traditional debates between positive and negative (and republican) liberty. It must also cover (1) the effects of social situatedness; (2) the disjunct between agents’ idealistic perception and the compromising imperfection of acting in reality; and (3) the ability of an agent to avoid frustration and Durkheimian anomie, for libertarianism to have substantive pragmatic appeal as a way for agents to realize their aims, satisfy their preferences, etc. The main reason for including these three under-explored aspects of agency is the realization that—with the rejection of its reliance on objective criteria and meta-normative foundations—libertarianism is left with an insufficiently developed treatment of the ontology of subjective, socially rooted agents. A more accurate, nuanced account of agency—libertarian or otherwise—must bear in mind the contextualization of perspective, beliefs and interpretation; agents’ dependency on interactive relationships with others for the creation of meaning and ascription of significance to external phenomena; and the separation between subjective reflection based on extrapolations of abstract principles from the political ‘realm’ and subjectively determined action within the ‘realm’ itself. Moreover, as elaborated later, a genuine and consistent commitment to this form of relational, subjective agency cannot be restricted solely for creating the ‘political/legal condition for the possibility’ of agency. Although Rasmussen and Den Uyl are right to say that it ought not to be the task of libertarian political structures to promote agency, this article will argue that a structure which recognizes the full extent of what agency is, and which sincerely claims to value it, must ensure that agency is at least supported and maintained, as implied by the overarching project of agency-protection.

However, the question of whether the libertarian commitments, as opposed to any other ideology’s intuitions, serve to protect agency best ultimately lies beyond the scope of libertarian self-analysis. Though by libertarian criteria of efficiency or rights-respect, libertarianism inevitably comes out best, it remains up to individuals to decide subjectively whether the libertarian conception of ‘best’ is the most appropriate in any given instance—which lies outside the remit of this discussion.

2. Problems with free-market anarchism

In this section, it is argued that free-market anarchism qua se fails to support the societal evolution and maintenance of a libertarian morality as outlined in Section 1, since libertarianism cannot countenance the full possible extent of unconstrained ideational competition in a free, anarchistic market. Specifically, under anarchism, the meta-norms by which libertarians set store may not come to be valued at all—including ‘agency’, in the ‘liberty-plus’ sense defined earlier. In other words, even strongly anarchistic conceptions of libertarianism cannot be perfectly neutral between, or tolerant of, all conceivable moral systems. The key distinguishing feature of free-market anarchism, as distinct from the forms of libertarianism that are prepared to countenance the existence of some form of unitary government, is that all the functions conventionally arrogated to the monopolistic preserve of a government-type coercive political structure are rendered plural and voluntary through their marketization. On the one hand, this
works *towards* the libertarian *telos* of supporting and protecting agency: agents have the option of choosing their security- and law-providers in a way that the imposition of a unitary state model evidently precludes. On the other hand, in a minarchic system, the dominant political structure holds the ‘institutional privilege’\(^\text{23}\) of exercising unassailable control over given aspects of inter-agential relations. The structure thus to some extent both *determines* and *sustains* the norms that shape and govern the social-political framework within which, and in reference to which, agents act and interact.

The free-market anarchist model, however, treats such privilege as arbitrary and therefore unjustified, and instead emphasizes the flexibility and responsiveness of pure marketization with respect to agents’ needs and wants at any given point (and their potential subsequent changes). The crucial point here is that free-market anarchism, by focusing on the marginal extreme of agency-protection, provides the insight that any political structure not voluntarily formed and explicitly opted into—if not strictly *consented to*—by an agent in effect holds arbitrary coercive authority over the agent from their perspective.\(^\text{24}\) To illustrate this, agents born into a society *already* governed by a particular political structure have had no say in the *exact* way in which they are socially constrained—i.e. they are ‘thrown into’ a particular subjective facticity that includes membership of a pre-existing structure which frames their every subsequent (political) action—so that their agency is in this sense contingent, and they themselves are less autonomous.\(^\text{25}\) While it may be possible for the agent to affect or alter the structure *ex post*, their efforts will be contextually conditioned by the nature of the structure as it exists already, and they will at all times be contending incrementally against an established *status quo*. In this sense, a free-market anarchist society, since it lacks such powerful institutionalized coercive frameworks, enhances agency by allowing individual members of society greater leeway and authorship in framing the coercive structures to which they submit themselves according to their subjective needs.

Nonetheless, free-market anarchism could be argued to *detract from* agency in two subtle yet important senses. First, in the absence of *any* unitary coercive political arrangements, it is by no means certain that the meta-utopia or ‘market’ in which all the competing private law- and security-providers operate will in fact support and represent a core morality rooted in libertarian meta-normative principles\(^\text{26}\)—or indeed a universal morality of any sort. If the practical resolution of moral concepts associated with social-political interaction—liberty, justice, non-coercion, property, etc.—is left to highly devolved and essentially diverse inter-agential intuitions, reasoning, negotiations, agreements, contracts and consociations, free-market anarchism offers no mechanism to check against the complete free *evolution of moralities and meta-norms*. While this *in itself* can easily be seen as a *boost* to agency, the consequences of such freedom may just as easily have the opposite effect. It is, for instance, entirely possible that agents in a free-market anarchist society choose—for case-specific reasons such as chance material conditions, shock events or agents’ enthusiasm and skill for political action—a strongly prescriptive and paternalist political-legal structure, a system.
that values collective property and action over self-ownership and autonomy, or
one with pronounced war-like or expansionist inclinations towards non-members.
Once such social groups are established, it is not obviously the case that
the voluntariness of agents’ membership of these groups will continue to be respected
by the group as a whole—agents’ enforced continued membership may be integral
to the performance of particular aspects of a group’s purpose (e.g. redistribution
from the wealthy to ensure a ‘decent’ universal living standard). As such, the
group may prioritize the preservation of their shared morality over adherence to
the principles of the meta-utopia, especially if there exists no way for these to be
enforced. Thus, even if all the individuals in a society are initially motivated by
libertarian principles, free-market anarchism can provide no systemic guarantee
that they will retain this motivation over time.

Second, not only does free-market anarchism fail to account for the full extent
of competition between moral systems in the market it describes, it also fails to
provide solutions for some of the most dangerous effects (from a libertarian
perspective) of imperfect competition between political and legal structures.
It gives a very precise account of the conditions that a coercive political-legal
structure needs to meet to be legitimate by libertarian lights—competing in a
market, consented to voluntarily, and satisfying criteria of respecting property,
self-ownership and non-aggression. However, it fails to outline how agents should
act if structures emerge that—whether through local economies of scale,27
limitations of political will, incumbency advantage and first-mover hegemony or
other political, economic or sociological reasons—become de facto uncompetitive
local monopolies. In practice, once such structures emerge, due in part to their
complex make-up, they may be ‘frozen’ and sluggish institutional systems that are
hard to dismantle—and on account of their monopolistic nature, the accumulation
of power transferred to them voluntarily by agents would make mere withdrawal
of consent an unrealistic and improbable way of ending their control. Under such
circumstances, individuals would find their agency heavily compromised. It would
effectively have been reduced exclusively to their initial choice-decision, with all
subsequent developments of the political-legal structure justified by backwards
reference to one isolated instance of agency being exercised. Free-market
anarchism thus, again, cannot guarantee in any meaningful or societally binding
sense that a societal system organized according to its principles will secure
individuals’ agency over time, after the initial moment of society-creation.

Not only is free-market anarchism compatible with these two outcomes, but
also, under certain strongly voluntaristic readings, the relationship even becomes
one of necessary entailment. Block, for instance, has sought to square autonomy
with heteronomy through the example of slave contracts28: libertarians, according
to Block, should countenance the voluntary choice to abrogate the future ability to
make choices as a legitimate exercise of agents’ autonomy. However, this
threatens wholly to undermine the libertarian commitment to agency in a free-
market anarchist societal structure, since it sacrifices an individual’s future agency
for the sake of preventing fraud and protecting an extremely demanding (and
arguably, myopic) conception of present agency.29 An amendment of Block’s
position might seek to retain for the individual some form of minimal ‘agency veto’ as a way of countering the irrevocable-self-binding and self-alienating aspect of the slave-contract form of libertarianism, though while such a solution is compatible with a libertarian core morality, it is not necessarily entailed by it. Given the problem of moral ‘evolution’ outlined earlier, there is nothing in the underlying structure of a free-market anarchist society that will prevent agents from losing their agency by ‘choosing away’ their claim-rights to non-coercion, respect for property and self-ownership. Free-market anarchism thus fails to acknowledge the full, self-corroding extent of its own societal implications: regardless of the ideological motivations that ground an initial commitment to free-market anarchism, the resulting model cannot provide any guarantees that any motivations or commitments will definitely be sustained—not even those of free-market anarchism itself. Ironically, although it is predominantly libertarian thinkers who have embraced free-market anarchism as a philosophical position, they fail to realize that the reverse entailment from free-market anarchism to libertarianism is a step that is neither necessary nor inevitable.

3. Agreement and maintenance of libertarian principles

In this section, the focus shifts onto the social-political structures that would need to be in place for a society or meta-utopia to become and remain libertarian. If, as argued in Section 1, libertarian commitments to protecting agency cannot be rooted in an objective morality, and, as suggested in Section 2, there is no reason to assume that principles of a generally libertarian character would emerge in an anarchistic society with completely free markets in ideas, it appears that libertarian social values must necessarily be the result of a political process. It is tempting to fall into the trap of specifying the type of process that would produce a libertarian morality, or even the perspectival attitudes and beliefs of agents who would choose libertarianism if they engaged in such a process. Yet this would inevitably fall foul of the same accusations of bootstrapping that have been aimed, among others, at the participants behind Rawls’ veil of ignorance or in Habermas’ ideal speech situation, and the denizens of the various state-of-nature theories of state creation. Moreover, this would arbitrarily constrict the types of ‘permissible’ engagement process to exclude ones that would be entirely feasible in an anarchic social situation where no prior terms of engagement hold—such as the informal catallactic ‘spontaneous order’ structures particularly favoured by some libertarians. Instead, the claim is merely that for libertarianism to emerge as a societal morality, some form of engagement process is required. The social meta-norms and political-legal principles endorsed by libertarians do not flow naturally or necessarily from agents’ ontology or the wider ‘way the world is’, but rather are contingent on the active, engaged, voluntaristic choice of agents interacting within society. It bears emphasizing that pre-social agential attributes and pre-political societal considerations are insufficient to induce convergence on any morality, let alone libertarianism specifically—and that (some) participating agents must see some level of appeal in a telos of protecting individual agency for
a libertarian ideology even to figure on the aggregated putative ‘list’ of societal moral ‘options’.

Speculatively, it is possible that a pre-existing concern to protect and maintain agency would affect the nature of the engagement, such that the likelihood increases that libertarianism is the ideology chosen to underpin the societal morality. Taking ‘agency’ to include the extent to which one can translate personal ideas and conceptions into practical implementations and actions, as suggested earlier, emphasizing this part of one’s ‘concern’ might entail an openness to the idea that all participants in such an engagement should be able to articulate their views freely and completely. This might, in turn, lead participants to recognize the need for some form of mitigation of power imbalances, in the form of a non-aggression or non-coercion principle. Similarly, holding the view that competitive attrition maximizes the quality of available goods—which supports agency by helping individuals avoid preference-frustration—might lead agents to support a pluralist approach to agenda-control—which may encourage participants to view choice as an integral part of the societal morality. Finally, a belief that agency-antithetical anomie is best avoided through direct engagement with the other agents with whom one will share one’s society could be used to ground a commitment to autonomy, with self-ownership and personal property as derivative attributed rights—and with voluntary society-membership as an implicit further extension. However, while all of these individual commitments and libertarian derivations are internally coherent, and thoroughly compatible with the forum-type political structure alluded to above, there is no necessary relationship between agents’ engagement simpliciter and the emergence of a libertarian social morality. Even if participants do subscribe to the societal need for the protection of individual agency, it is entirely conceivable that they may—in the ideational anarchy that precedes the engagement process—hold very different views of what ‘agency’ constitutes, as well as what successful ‘protection’ of it would entail. Libertarians, therefore, are reduced to the claim that in a participatory political engagement that sets store by the protection of agency, libertarianism is highly likely to be adopted as the solution to the protecting-agency problem.

However, even if a given political engagement process does result in some form of consensus that libertarianism offers the principles that best protect agency and should therefore underpin the society, there is still a step missing before the resulting societal structure can be considered stable. Given that a free-market anarchist meta-utopia cannot ensure the maintenance of a libertarian morality over time, partly because it is impossible to provide such a morality with universal foundations, libertarianism is dependent on some form of moral unifying mechanism to ensure long-term, inter-temporal protection of agency. Alongside its legal and political aspects, such a mechanism must recognize the importance of social and cultural elements in achieving communal unity, in a similar vein to the Rousseauian conception of the ‘civil religion’.33 That a particular group of agents have—through some form of engagement of views, needs and interests, whether through discussion, attritional emergence over time or the aggregation of particularized inter-agential agreement—decided on libertarianism as the ‘best'
way of meeting a commitment to protecting agency at a given juncture does not offer any indication that: (1) other agents who subsequently join the society would agree; (2) the original agents will continue to hold this view (after experiencing the libertarian society in practice); (3) the original agents will always set as much store by the telos of protecting agency as they do initially; and (4) other (future) similar engagements would produce the same result. These results are all compatible with the ideational and structural flux of free-market anarchism, but become unpalatable from the perspective of attempting to establish and maintain a stable libertarian society. In a strong sense, there is a trade-off between libertarianism and anarchy, since the very act of formalizing and institutionalizing a societal telos of protecting agency limits the subsequent scope of that agency within the societal context. To be sure, as with the associative groups within the overarching societal structure, the libertarian society remains entirely voluntary—agents retain at all times the capacity to ‘opt out’ of the social morality and of return to a state of pure meta-utopian anarchy with respect to other agents. Nevertheless, libertarianism confronts agents, however minimally, with a binary, exclusive choice between (1) accepting the societal terms of engagement and enjoying the agency benefits of societal membership; and (2) exercising agency over the terms of engagement and thereby necessarily withdrawing from the libertarian society.

As a result, for a libertarian social morality to stand a chance of persisting, the earlier assumption needs to be modified. Agents participating in the political engagement process must not only see the appeal of the telos of protecting individual agency at the moment of engagement, but must also know that they will continue to see its appeal indefinitely, or see the appeal of its ‘maintenance’—thereby ruling out possibility (3) in the preceding paragraph. This does not mean that agents will always prefer the libertarian way of achieving this telos, but the implication of the more ambitious expansion of the telos-assumption is that agents will value the perpetuation of a societal situation in which agency is protected. Agents may therefore change their views on whether libertarianism best achieves the telos in question, but they must hold that it would be better achieved in general in a society with a universal telos-supporting morality than in the moral flux of an anarchic system—since otherwise they would have had no incentive to participate in the original political engagement process. This implies, however, that participating agents cannot expect to rely on themselves or others permanently internalizing or being socialized to adopt the libertarian principles underpinning societal telos-satisfaction. The libertarian morality is a means to an end, but it is not self-policing. In order to ensure that the societal morality is sustained beyond the initial consensual moment of engagement, participating agents need to provide some form of political-legal mechanism whose main purpose is to represent, support and enforce the morality on which the agents have settled. It would be overly speculative and prescriptive to specify the particular form or structure such a mechanism ought to take—except to offer the (fairly obvious) caveat that it would need to be demonstrably effective at achieving its stated purpose, and that its failure to do so best would be reason enough for it to lose legitimacy in the eyes of members of the libertarian society. In effect, the suggestion here is for a broadening
of the Lockean split between community and commonwealth: the initial political engagement process produces separately agreement on (1) the existence of a common social association within the meta-utopia; (2) the libertarian nature of the principles by which the association abides; and (3) the make-up of the political-legal structure intended to maintain the morality. (1) is prior to (2), which is in turn prior to (3)—and agents retain at all times the agency option of withdrawing from every ‘tier’ of their societal association.

4. The case for libertarian intervention

The argument so far has addressed the need for a unitary moral-legal structure—i.e. a homogenized network of public institutions with a monopoly over the determination and enforcement of social morality—to ensure the inter-temporal durability of the societal commitment to protecting agency (in a libertarian way). In this section, the task becomes one of examining what continuously ‘protecting agency’ entails for a political-legal structure formulated along libertarian principles: (1) assessing the social imperfections that may impinge on each of the libertarian ‘components’ of agency as identified earlier; and (2) discussing the options which the political-legal mechanism has at its disposal to intervene in the inter-agential relational status quo in each case, in order to achieve its purpose of safeguarding the moral telos. There is inevitably a large degree of overlap between the different ‘components’, complicating any attempt to treat them in isolation—but what follows is an attempt to illustrate the emphasis or ethos that each component would bring to the way a libertarian society might deal with the problems that arise. The main contention here is that any societal commitment to libertarian conceptions of ‘protecting agency’ and libertarian methods of achieving this telos entails more extensive manipulation of societal relations than libertarians would ordinarily be prepared to accept. In particular, the libertarian alternatives put forward include welfarist redistribution to mitigate those consequences of economic and social power imbalances which libertarianism would regard as unconscionable.

Arguably, the most fundamental of the libertarian components of agency is a widely defined conception of liberty, incorporating both autonomy and the absence of constraints. Protecting this aspect of agency in practice may run into a large variety of problems, which broadly constitute either heteronomous dependence on an external coercive authority, or the imposition of social restrictions. More fully, the former concerns any situation in which social relations lead to agents’ action being contingent on external factors resulting from others’ agency in a way that detracts from their ability to translate self-authored intentions and authentic will into external effects on social phenomena—this could include anything ranging from a strict family relationship to interventionist government regulation. The latter refers to both physical (i.e. geospatial or capacitary) and psychological (i.e. personal-internal or moralized) restrictions—and in both cases, the importance of perceived, potential or expected constraints cannot be ignored as equally significant to agents’ perspectives on their own facticities. It would be both
infeasible and anti-libertarian for the political-legal structure to intervene case-by-case to remedy such infringements to liberty *ex post*—since this would itself constitute heteronomy, as well as clashing with other components, not least non-aggression and voluntarism. Instead, a libertarian minarchy might prefer to shape the basic structure of society *ex ante* in a way that would prevent such problems from emerging later as part of the initial political engagement. This would be achieved by delimiting the scope and influence of the loci of authority and the sources of constraints—in the sense of legal limits that can only be strengthened, not weakened, the cultivation of an ethos opposing the reification of the *status quo* and encouraging criticality towards one’s context, and the dissipation of power concentrations. For instance, the political structure itself could be made strongly subsidiary, federalized, part-privatized and/or minarchic—with responsibility devolved to the most local possible level, preferably agents themselves or the closest feasible higher tier. At the same time, however, the commitment to agency-protection implies that the libertarian society ought to maximize each agent’s bargaining position by facilitating access to the means whereby autonomy can be achieved in the social context—including legal ‘cover’, the political process and economic power in the marketplace. With the related component of *choice*, the problems that arise fall essentially into the category of restrictions on the objects over which agents can autonomously exercise their voluntary capacity, connected to the liberty definition earlier. As such, the primary libertarian concern would be with the emergence of hegemonic absolute monopolies or cartels in markets for *goods de natura integral* not to the existence and preservation of the libertarian society itself (i.e. security and law)—since these goods are monopolized by the minarchic state already—but to the maintenance of individual agency, so that choice for these specifically is not reduced merely to a binary dilemma between acceptance and refusal of the monopoly good. Moreover, there is no necessary qualification regarding the origins of the restriction of options for a possible libertarian response. Choice and competition deficits arising from high sunk costs (e.g. transportation), locality issues (e.g. education and healthcare), or the requirement of specialist skills to fill a narrow but crucial niche in the market (e.g. hiving off socially necessary but unprofitable government tasks to agencies), all qualify for a libertarian response. The nature of the response could broadly be summarized as ‘option creation’—the breaking-up of social structures that threaten to achieve monopoly status, pluralization through incentivizing new entrants or even facilitating and fostering research to avoid market stagnation. Concerns might emerge at the excessive coerciveness of such an approach on the part of a libertarian state, since the constant threat of political interference may prevent private providers from innovating and expanding to achieve potentially beneficial economies of scale—though, as always, the concern for *individual* agency remains paramount. Again, it is more probable that a libertarian society would seek to facilitate the emergence of competitive pluralism *ex ante* than to impose it *ex post* on a radically imperfect market—while, of course, the latter option can never be definitively ruled out. Moreover, the libertarian focus would be less on the creation of competitive
pluralism for its own sake, but rather as a means to avoid situations where agency is infringed. A libertarian society would thus refrain from intervention in all but the most serious instances of radically restricted choice, such as market absence or absolute monopoly, and then only in markets for goods crucial to agency, to which there was literally no alternative.

With self-ownership, many of the concerns are shared with the autonomy side of liberty, specifically the ‘integrity’ of an agent’s control over and responsibility for themselves as originator of their actions, both qua actions and qua causal ‘trigger’ for the subsequent results. The clearest threat to self-ownership in this sense is any situation in which agents come to be viewed not as agents but as heteronomous ‘tools’ fulfilling a given role in society. An obvious example of such person-as-function perception would be ‘wage labour’ or ‘wage slavery’, whereby agents-as-workers become trapped in a situation in which their agency is reduced to their supplying labour in order to meet their basic survival needs. The libertarian solution to this would focus on preventing the emergence of radical imbalances of power—a divergence from free-market anarchist support for the ‘voluntary slavery’ arguments mentioned earlier—by emphasizing the coercive aspect of situations in which agents have no choice but to submit to a particular role in society. As with solutions to choice problems, the night-watchman state’s role is limited to that of checking situations where the infringement of self-ownership is unavoidable—including near-absolute labour market monopsony, where the libertarian state would be committed to ensuring that workers are not faced with the loaded choice of working-or-perishing. Crucial to such a view would be a derivative conception of agency as ‘owning participation’ in the context of political-social engagement, derived from the view of agents ‘owning labour’ in an economic sense, whereby agents retain the choice of whether to accept a particular social role. Roderick Long’s concept of libertarian unionization and ‘equality in authority’ would certainly be a plausible remedial solution to power imbalances, as its focus on the autonomy of workers with respect to choices about employment may be instructive to the formulation of a more generalized model of libertarian social interaction. However, a preferable alternative would be a ‘workplace stakeholder’-style situation, resembling the political engagement process prior to the establishment of the minarchic political structure. The aim of such a model would be to recognize that, in a context of relational engagement, variation between agents, and perpetuated purposive political activity, agents must to some degree be seen as role-fulfillers—but also that the libertarian valorization of agency implies that agents must be integrated into any and all societal decision-and engagement-processes qua equal agents, not qua means to the achievement of the goals of sub-state organizations.

The association of libertarianism with a belief in strong (and to some extent categorical) property rights to provide a stable basis for social influence and meaningful agency is liable to produce some of the most contentious societal problems between agents. Key to these is the strong link between ‘capacity for social action’ and (potential, if not always wielded) economic power, derived from the market value of the property which one controls. On one level, the lack of
property in even the most rudimentary form (i.e. homestead, survival rations and productive tools) constitutes a serious constraint on agency, since agents without property would find it difficult to enter into any system of exchange cycles, thereby perpetuating their state of disadvantage. At the same time, in a political sense, propertyless members of society are morally incidental to political-legal structures due to their inability to hold a tangible stake in the community, leading to a risk of their becoming ‘second-class citizens’. At the opposite extreme, however, following G. A. Cohen and Sterba’s critiques of libertarianism, the institution of property itself constitutes a constraint on the liberty which libertarians prize so highly. By delineating a given object-set as uniquely owned by a given agent, one deprives other agents of the ability to derive use from these objects, however great their need for them may be. Moreover, much as with the option-restricting monopolistic concerns earlier, if property acquisition is untrammelled, then it becomes possible for a property-rich agent to skew the choices of those in a less advantaged position by affecting the market conditions in which the society operates, leading to potentially severe reductions in their agency. While the most obvious solution would be to attempt to break the economic-power/social-influence link ex ante, it does not seem possible to wholly separate the economic sphere from the others—although a libertarian society could relax the criteria for participatory membership by making involvement in the political engagement process contingent on the mere fact of agency, rather than on its societal basis. More plausibly, and less controversially, one could introduce certain ex ante ‘baseline’ conditions—such as Steiner’s ‘basic endowment’ or Van Parijs’ ‘basic income’ theories in the left-libertarian tradition—as a way of granting agents the necessary means for meaningful participation in society, without resorting to anti-libertarian ex post redistributive intervention.

Implicit in several of the earlier components, and integral to the suggested solutions for the problems that they might face, is the strong libertarian commitment to non-aggression, in the sense of opposing unjustified, violent coercion. Inevitably, a trade-off between (for instance) liberty and coercion is already built into any libertarian political-social structure, following the argument that any such structure would have to be at least minarchic. However, in libertarian terms, the ex-ante-framing rather than ex-post-interference emphasis in minarchic coercion, the voluntary nature of agential co-involvement in society (and by extension, the scope for opting out) and the agreement on libertarian societal principles in the initial political engagement process make structural coercion justified as a general principle, if not in specific cases of brutality. The main problem with non-aggression, therefore, comes from what one might term ‘agency clash’. The laissez-faire public, relational situation in which members of society exercise the various components of their agency is likely to result in ‘boundary conflicts’, where different agents’ aims and interests prove incompatible through their reference to the same means and resources, especially if the libertarian social morality gives no indication how the conflicts should be resolved. At the same time, the protection of agency requires in a very real sense the ability to stave off potential threats from external non-members. While the solution to the latter
problem is largely provided by the existence of the state monopoly on some form of (defensive) army, merely relying on the internal equivalent of a state police monopoly to ensure a non-violent resolution that respects both individuals’ agency would itself infringe autonomy beyond what is already necessitated by the agency clash. Rather, a libertarian recommendation might be for a ‘claim resolution’ function in the legal system, to which the parties in an agency clash can turn if private market negotiation fails to provide a mutually satisfactory outcome. The aim of public involvement in such cases would be to devise a definite solution to conflicts and thereby avoid interminable and fruitless negotiation, and for agents to be able to demonstrate a binding commitment to abiding by the outcome of the ‘managed’ bargaining process.

In order to avoid the flaws associated with excessive methodological individualism, libertarianism must take into account the challenges posed by seeing members of society as not only relationally interactive but also socially situated in an ontological sense. Primary among these are the agency effects of individuals’ ability to commit voluntarily to membership in social groups at the sub-state level—potential conflicts of allegiance, differential duties and responsibilities imposed through membership and the psychological impact of sub-group customs and values on how agents perceive the rest of society and interact with it. A particularly potent instance would be agents who are either born into a societal sub-group or become heavily integrated into its practices, such that leaving the sub-group would put them at serious risk of anomie, and who for whatever reason become ostracized internally within the group by their fellow members—obvious examples would be value-heretics or non-conformists in the context of cultural/ethnic minorities. A libertarian solution could take its lead from Elizabeth Anderson’s concept of ‘democratic equality’, whereby the minarchic state frames the legal-political structure so as to ensure equality of opportunity for societal participation—taking a relational view of the agency that requires protection, as well as a ‘muscular’ interpretation of the libertarian morality which the political-legal structure is there to maintain. Giving agents ‘options’ outside the sub-groups within which they become ostracized is not directly, however, a question of economic compensation: economic support for agents who have been excluded from their sub-groups would only constitute meaningful recompense if the agent’s exclusion deprived them of the property needed to form a basis for their agency. Instead, a libertarian society should focus on providing agents with alternative possibilities for relational engagement. The focus here would be on fostering the existence of a rich, plural ‘civic society’ of coexistent and competing sub-groups to reflect the different interests that make up the various aspects of agents’ identities—as well as supporting the ability of agents to access flexibly (and secede from) as many sub-groups as they choose to participate in.

A further part of the socially rooted agency which libertarians attempt to protect, connected to autonomy and to some extent to self-ownership, is the ability of agents to translate their ideals into reality, both at the political engagement stage, and subsequently in societal interaction (political, economic, etc.). Anything that might detract from an agent’s ability fully and successfully to
participate or engage in societal processes would become problematic—ranging from apathy, poor expression, undecidedness and misinformation for agents to participatory ‘entry barriers’, minority domination by the majority, ideational reification of conservation and habitual deferral to perceived expertise at the societal level. The clearest framing solution to such problems—referring back to one of the earlier proposals regarding infringements of liberty, which in many ways covers and takes precedence over the other aspects of agency identified here—would be to promote from the agential perspective a proactive, critical ethos in all forms of inter-agential engagement. In a strongly libertarian sense, society might foster a framework that allows and encourages agents to take responsibility for all levels of their interactions—not merely through agents’ autonomously forming their intentions, and taking on both risk and moral culpability, but also by their involving themselves directly and personally in every stage of such interaction without relying on being ‘spoken for’ by intermediaries. In parallel, a libertarian society could foster an ethos of adversarial ideational competition in societal institutions that allows agents the scope for radical disagreement while maintaining respect for others’ agency as the cornerstone of interactive public engagement. In this sense, there is considerable and under-explored scope for a mutually informative crossover between the ‘agonist’ strands of post-Marxist and post-liberal critical theory, and the contemporary status of libertarian ideology. Inevitably, the telic protection of agency requires an element of consensualism in the final resolution of divergences between agents—in the sense that ‘action’, as both cognate and integral part of ‘agency’, implies aspects of ‘performance’ and ‘decision-reaching’ that essentially exclude the possibility of interminable debate. However, it is equally important for a meaningful and complete libertarian conception of protected agency to retain an emphasis on the participatory and procedural aspects of political engagement—in direct contrast to those schools of libertarian thought which see themselves as seeking to restrict the areas of social life which politics can address and affect.

Finally, further to the earlier concerns regarding social situatedness and participation, there is a wider range of potential issues that may emerge and could constrain individual agency through frustration and anomie. Broadly, these are associated with the potential inter-temporal erosion of agents’ societal roles—for instance, demand for their particular set of skills and talents, and for the goods they can (help to) produce using them, falls as societal needs, tastes and values change over time. Again, it would be un-libertarian for the state to intervene to prevent the attritional effects of stochastic societal change. In the economic context, state intervention of any sort in the labour market to combat disruptions in employment patterns would run the risk of descending into blatant heteronomy, the erosion of responsibility, a reification of the status quo at the expense of ‘option creation’ and the ‘freezing’ or ossification of agents’ association with particular inescapable societal roles. Instead, in line with the earlier suggestions designed to boost individual agents’ access to societal opportunities to benefit or expand their agency, a libertarian state could seek to frame society in such a way ex ante as to lower the costs of shifting to a new societal role to the greatest possible extent—
again, via legal protections and the strengthening of individual bargaining positions through the dissipation of power concentrations. However, it is unlikely that this would be achieved only through legislative or regulatory means, so a more effective means of protecting agency in this sense might be the complementary provision of a basic level of education or re-education (in terms of skill acquisition, instead of necessarily academic learning) to allow agents greater autonomy in choosing a social role that both meets market demand and adequately reflects the value of their agency. Again, this is not a suggestion with which much contemporary libertarian thought would be very comfortable—but it is nonetheless a crucial step in ensuring that the protection of agency is sustained meaningfully and consistently over time.\(^49\)

5. The libertarian conception of welfarism

From the earlier analysis, it seems that a libertarian society would need to manipulate the basic moral and institutional structure of society fairly extensively in order to adequately meet its own principled commitment to the protection of agency, both universally across agents and over time. By virtue of their sustained prioritization of agency viewed through the lens of a telic account of human flourishing, the theoretical suggestions made in the previous section subscribe to a particular ethos of welfarism. This term refers, in its broadest sense, to traditions in both philosophy and political economy that are concerned with some form of well-being and systematic social support for humans (usually citizens), often with solidaristic undertones. These traditions typically argue that it is the stated purpose—not merely the duty—of political institutions to support the well-being of those agents within their claimed jurisdiction, and that such institutions are created specifically in order to formalize and streamline pre-existing ‘charitable’ processes and tendencies that arise in response to manifest social need. Given the libertarian focus on agency identified earlier, it seems that there is a significant welfarist component to libertarianism which has, so far, gone largely ignored, denied and unrecognized by both libertarians and their detractors. Moreover, from the arguments in previous sections, the libertarian need for some form of unified political authority to safeguard and maintain this focus on agency implies that a clear and effective way in which such an authority could fulfil its purpose is for it to assume a clearly welfarist character and outlook. Before offering some final conclusions, it is therefore worth briefly elaborating the ways in which the welfarist proposals outlined earlier constitute an alternative within the libertarian tradition—specifically, how they satisfy the key requirements of libertarian ideology.

First, the crucial difference between the libertarian quasi-welfarist interventionism proposed here and more conventional welfare-statism is the libertarian emphasis on voluntarism. Agents in society retain a strong degree of autonomy with respect to both the content-definition and public enactment-manifestation of their agency—in other words, control over both decision and performance remains resolutely with the agent, without external pre-emption or framing (beyond the
strictures of the prevailing social morality). The political-legal structure creates opportunities for a libertarian conception of agency to flourish, but does not enjoin agents to participate in a particular prescribed way—thereby preserving the liberty of agents in a much greater way than rival welfarist systems. Second, the libertarian welfarist system focuses on enabling the emergence of available options for the devices aimed at mitigating potential and actual societal imperfections, rather than relying on the state’s institutions to impose their direct provision on all members of society. Again, the institutions avoid prejudging the preferences agents may have, and the social eventualities that may arise, beyond the minimal requirements of an endorsement of libertarianism. Libertarian welfarism guides society so as to make it more likely that the means to protect agency will be available, but does not prescribe either which means should be used to achieve this telos, or the way in which these means should be themselves provided—a formal recognition of the fundamentally evolutionary and subjective nature of agential perspective and preferences. Lastly, libertarian welfarism is underscored by a strongly market-oriented drive for competitive variety, efficiency and quality of provision that does not usually characterize even hybridized part-private–part-public welfare-statist models. The political-legal structure offers definite indications of the libertarian ends and the policy means by which they can be reached, but does not claim to be itself best suited to implementing these means. Rather, it allows attritional competition in the market to determine not only the exact way in which the policies are implemented, but also to reflect changes (over time) in agents’ assessment of which policies are best suited to achieving the libertarian telos in different instances. As a result, when compared to other welfarist ideologies, libertarian welfarism is much more finely attuned to the stochastic, fluid nature of socially aggregated variations in agents’ subjective perspectives.

6. Conclusion

In the end, then, it appears that libertarian attitudes to the existence of a monopoly over the means of political and legal coercion in a society are faced with a clear dichotomy. On the one hand, libertarians can endorse free-market anarchism as the ‘purest’ way of respecting agency, in which case they are forced to abandon any pretense that their core moral claims will be anything other than subjective, sectional and open to ongoing vigorous competition in a plural, rivalrous marketplace of ideas. On the other hand, libertarians who accept the need for some form of minarchism to ensure that their proposed society does run along universalist libertarian lines must also acknowledge the strong commitment this entails to a welfarist framework built on principles of socially conscious ‘nudging’, if not strictly libertarian paternalism. There are clear differences between the libertarian welfarism put forward here and the welfare-statism to which libertarians traditionally object—most significantly, the voluntarism, laissez-faire framing and tolerance for competition which welfare-statists of a liberal or social-democratic stripe would consider insufficient for adequate support.
of individual agency. Although the prospect of welfarist support for agency is not one usually considered by libertarians, this is an attitude that needs urgent reconsideration, both for the sake of philosophical consistency, and to enable libertarians to make more extensive contributions to modern debates around the principle and practice of social policy.

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Notes and References


2. As will become apparent in the later analysis, ‘competition’ is used here in a strict non-normative sense. Competition constrained by meta-normative caveats, for instance, commitments to liberty or rights, which is endorsed by some free-market anarchists, does not satisfy the conditions of being truly either ‘free-market’ or ‘anarchic’.


31. Hayek, *op. cit.*, Ref. 16, pp. 7–33, 54, 88, 137.


