



# Mid-Libertarianism and the Utilitarian Proviso

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## 1 Introducing Mid-libertarianism

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.

This paper proposes a new libertarian theory of morality: a theory that endorses a *utilitarian* proviso for use of external resources. I call this theory *mid-libertarianism*. The basic idea of mid-libertarianism is that 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 paper is divided into four main sections. In this first section, I introduce mid-libertarianism as a normative ethical theory. In the second main section, I put forward the key arguments for mid-libertarianism, which are, roughly, that it maintains the main explanatory powers of existing versions of libertarianism, while it avoids some of the most severe problems that these theories face. In the third section, I answer some potential objections to mid-libertarianism. In the fourth section, I conclude that mid-libertarianism deserves to be taken seriously as a new contender in the normative ethics debate.

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## 1.1 The Core of Libertarianism: The Self-Ownership Thesis

Since the theory I am proposing is a version of libertarianism, I will start by saying something about the core ideas of libertarianism. There are many different versions of libertarianism discussed in the philosophical literature (Brennan 2012; Mack 2011). In this paper, I discuss libertarianism as a *basic* moral theory. As such, libertarianism provides a fundamental criterion for morally right action, and is thus a rival to utilitarianism, Kantianism, virtue ethics, etc. (Vallentyne and van der Vossen 2014). The gist of libertarianism is that individuals have certain negative moral rights, and that those rights determine right action. As this implies, I am not here discussing *political* libertarianism, which can be based on non-libertarian moral theories such as contractarianism or utilitarianism.

Libertarianism's most salient thesis concerns full moral self-ownership, according to which every person has fundamental moral rights to anything that counts as herself – including her body parts, organs, blood, eggs, sperms, stem cells, thoughts, etc. We may call these *personal resources*. Most versions of libertarianism also allow people to gain moral ownership over natural resources (i.e., non-personal resources) – such as land, minerals, water, air, etc. We may call these *external resources*. While the rights to our personal resources are natural and thus in need of no acquisition, the rights to external resources must somehow be acquired (Mack 2010: 54; van der Vossen 2009: 368).

It is not entirely clear how personal resources should be distinguished from external resources (Lippert-Rasmussen 2008). For instance, any person's body consists of material – molecules – that once were external to her body. Also, any person's continued existence is contingent on the use of external resources such as air (to breathe), food (to eat) and water (to drink). Despite these problems, we seem to have an intuitive understanding of the distinction. For instance, it is quite unproblematic to distinguish you from me, me from my clothes, and my clothes from your smart phone, etc. Since my aim in this paper is to provide what I think is the best version of libertarianism, I will sidestep this problem here. Suffice it to say that if the distinction is problematic, then it is so not only for mid-libertarianism but for any version of libertarianism.

With that said, libertarianism maintains that full ownership of an entity (one-self or one's external resources) consists of a full set of *rights* over that entity. According to Vallentyne and van der Vossen (2014), these rights amount to rights of

- (i) *control* (over the use of the entity, both a liberty-right to use it and a claim-right that others not use it),
- (ii) *compensation* (as rectification for when someone uses the entity without one's permission),
- (iii) *enforcement* (e.g., rights to self-defense if someone is about to violate these rights),
- (iv) *transfer* (of these rights to others by sale, rental, loan, or gift), and
- (v) *immunity* (to the non-consensual loss of these rights).

The reason why libertarianism fundamentally endorses only *negative* rights (i.e., rights to *non-interference*) is that the self-ownership thesis is inconsistent with fundamental *positive* rights (i.e., rights to assistance). Positive rights would obligate individuals to actively serve as means to other individuals' ends, which would infringe on the former individuals' self-ownership. According to libertarianism, no adult individual initially has any right to any sort of positive treatment or aid from others (Narveson 2013: 382; Mack 2010: 62). Note also that libertarianism is concerned with *fundamental moral* rights, as opposed to *derived* or merely *legal* rights. As this means, libertarianism holds that people bear their rights irrespective of whether they are recognized by any legal system.

The libertarian rightness-criterion can be formulated as the

***Non-Aggression Principle:*** *An action is morally right if and only if, and because, it does not violate anyone's rights.*<sup>1</sup>

Among libertarians, "rights-violation" is typically understood in terms of non-consensual boundary-crossing. There is, however, an ongoing discussion about how "boundary-crossing" and "consent" should be understood. Since the relative plausibility of mid-libertarianism will not depend on any such specific understanding, I shall not here take a stand on this issue.

## 1.2 Provisos for Use and Appropriation of External Resources

Most versions of libertarianism allow people to privately appropriate external resources. On the libertarian theory of appropriation, external resources become privately appropriated by the person who first discovers them, mixes his labor with them, brings them into useful production, or merely claims them (Nozick 1974: 175-82; Feser 2005: 65-6; Rothbard 2009: 14). What distinguishes different versions of libertarianism is the limit they set on how much external resources an individual may use or appropriate (Narveson 1999).

Most versions of libertarianism impose a "fair share"-constraint on appropriations of external resources. This constraint is originally due to Locke, who formulated a proviso according to which individuals may privately use or appropriate external resources only as long as they leave "enough and as good" for others (1689: Ch. V, §27). On *right-libertarianism*, as defended by Nozick, this means that an agent may appropriate resources only insofar as she does not thereby put anyone in a worse situation than they would otherwise have been (Nozick 1974: 178). According to *left-libertarianism*, as proposed by Vallentyne, Otsuka and Steiner, an agent may appropriate resources only insofar as those are used in an egalitarian manner. On one influential interpretation (to be discussed below), this means equalizing people's opportunities for well-being (Vallentyne 2009; Otsuka 2003; Steiner 2009).

<sup>1</sup> See, for instance, Nozick (1974: 34), Block (2004), Vallentyne (2007a), and Mack (2010: 59).

Although most libertarians think of the proviso as a condition for successful appropriation (i.e., a condition for when an appropriation results in private ownership), they tend to disagree on how a failure to meet the proviso relates to wrongdoing. One interpretation says that the proviso states an additional criterion for right action, separate from the criterion stated by the non-aggression principle. Another interpretation says that the proviso identifies certain rights that people have naturally with regard to external resources (e.g., they initially own the world jointly) – rights that are violated whenever people use these resources without the consent from others. A third interpretation is that the proviso identifies a compensation right that people have conditionally on other people’s use of external resources – rights that are also protected by the non-aggression principle.

All formulations of the proviso, however, suggest that people have certain obligations conditional on their use of external resources. Moreover, they all rely on the intuition that external resources should be fairly divided (although libertarians have different intuitions about what this means in detail). Indeed, the possibility of a libertarian proviso is due to the distinction between personal resources and external resources, and the fact that nothing follows immediately from the self-ownership theses with respect to external resources. It is an open question whether external resources are initially unowned or owned, or whether they initially belong to everyone equally.

There are thus different ways in which the proviso can be formulated. The formulations mentioned above do not constitute an exhaustive list of possible provisos. For instance, Locke himself considered more than one proviso for use of external resources. Besides the abovementioned “enough and as good”-proviso, he considered an “efficiency”-proviso. Roughly, this proviso says that an agent may use resources only to the extent he is capable of using them *productively* (Locke 1690: Ch. 5).<sup>2</sup> It is the possibility of a libertarian proviso in general, and Locke’s efficiency-proviso in particular, that opens up for a utilitarian proviso for use of external resources – and thus a mid-version of libertarianism in between left- and right-libertarianism respectively.

### 1.3 A Utilitarian Proviso

As any proviso attached to the non-aggression principle, a utilitarian proviso would be a condition for use or appropriation of external resources. Indeed, a utilitarian proviso would also bear the core contents of utilitarianism. According to utilitarianism, the right thing to do in a situation is to perform an act that produces at least as much utility as any alternative act would produce in that situation (see, for instance, Mill 1871; Tännsjö 1998; Bykvist 2010). Consequently, a utilitarian proviso would imply that *if* an agent uses external resources, *then* she should maximize utility.

<sup>2</sup> Locke says about the external resources that we should “make use of it to the best advantage of life, and convenience” (1690, Ch. 5: §26), and that “[n]othing was made by God for man to spoil or destroy” (1690, Ch. 5: §31). This proviso is discussed as a *no-waste* proviso, according to which individuals may use resources only if they can put them to good use (Bovens 2011).

There are several different ways in which this could be understood. Take the notion of utility first. Often “utility” is understood in welfarist terms, denoting preference-satisfaction or hedonic experiences. It is possible, however, to understand “utility” in non-welfarist terms denoting, for instance, fulfillment of certain items on an objective list, perfection, or self-realization. In this paper, I will be open to whether a welfarist or non-welfarist understanding of “utility” is most plausible. (However, I will return to this issue in section 3.3, where it becomes clear that it could make a difference to the theory I am proposing.)

It is still possible to interpret the utilitarian proviso in several ways. On one interpretation, the proviso would – together with the non-aggression principle – imply that an act which involves the use of external resource is right if and only if it does not violate anyone’s rights *and* if it maximizes utility. However, such a theory would be impracticable. Since many utility-maximizing acts involve rights-violations, and since many rights-respecting acts exclude utility-maximizations, it would hardly yield any recommendations at all. A more plausible interpretation of the utilitarian proviso is one where the non-aggression principle restricts the set of actions to which the utilitarian proviso applies. Accordingly, an act which involves the use of external resources is right if and only if it is one that maximizes utility *among those acts* that do not violate anyone’s rights. In contrast to the previous interpretation, this combination would not be impracticable. There will always be one or more utility-maximizing acts relative to the set of acts that respect people’s rights.

Still, this view would yield counterintuitive recommendations. For instance, since no agent can violate their 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.

Therefore, a more plausible understanding of the utilitarian proviso is one that does not apply to *all* acts available to the agent, but *only* to those acts that involve the use of *external* resources – i.e., those acts that become available to the agent given their use of such resources. In accordance with this idea, the utilitarian proviso I propose can be formulated as follows:

***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.*

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

Now, as mid-libertarianism combines the libertarian non-aggression principle (considered as a principle for right action in general) with the utilitarian proviso (for use of external resources in particular), we may formulate a mid-libertarian rightness criterion as follows:

**An act is right if, and only if, and because:**

- (i) **it does not violate anyone's rights, and**
- (ii) **if it involves the use of external resources, these resources are used so as to maximize utility in a rights-respecting way.**

The basic idea of mid-libertarianism is, accordingly, that individuals are free to do as they want as long as they do not restrict the freedom of others, given that the external resources they use are used in a way that maximizes utility. In the next main section, I spell out the main arguments for mid-libertarianism.

## 2 Arguments for Mid-Libertarianism

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 objections that can be raised against classical libertarianism.

Since mid-libertarianism comes with a utilitarian proviso for use of external resources, something should be said also about how mid-libertarianism fares in comparison to utilitarianism. If utilitarianism would be a better theory than mid-libertarianism, then my proposal in this paper would make no sense. As I will argue in section 2.3 and 2.4, however, mid-libertarianism maintains some of the main explanatory powers of utilitarianism, while it avoids some of its main troubles.

### 2.1 Mid-libertarianism Maintains the Explanatory Powers of Classical Libertarianism

As we saw above, some of the main strengths of classical libertarianism are the explanations it gives as to why it is wrong to kill other people, or steal their organs, etcetera. Libertarianism manages to explain in an intuitive manner why we are never allowed to use innocent people against their will, why rape is wrong, why (involuntary) slavery is wrong, and so on. Also, it explains why we should be free to do nothing at all if we wish: If you did not break it, you need not fix it!

Of course, such recommendations are sometimes yielded by other moral theories as well, but the libertarian explanations as to *why* such acts are wrong/permissible

are quite straightforward: They stem directly from the self-ownership thesis which puts the rights of individual people at its core. Libertarianism thus appears to point out *the right kind of reason* for why we should respect people and their lives. In other words, libertarianism appears to give the *correct* explanation to some of our widely held intuitions – including, first and foremost, the one that we should not do bad to others.

Thanks to the endorsement of the self-ownership thesis, as well as the endorsement of the non-aggression principle, mid-libertarianism manages to yield these explanations too. Just as classical libertarianism, mid-libertarianism condemns murder, rape, involuntary slavery, and so on, in virtue of its assumption that people have certain inviolable moral rights to themselves. Consequently, mid-libertarianism maintains some of the main explanatory powers of libertarianism. Indeed, if this was not the case, mid-libertarianism would not even be a libertarian theory.

## 2.2 Mid-Libertarianism Avoids the Main Objections Raised Against Libertarianism

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. In this sub-section, I spell out these objections and show how mid-libertarianism avoids them.

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.

Perhaps one could argue that mid-libertarianism *still* demands too little from us, since it only requires that *external* resources are used so as to maximize utility – and so to the extent we ourselves use such resources. However, mid-libertarianism is *less* vulnerable than classical libertarianism to the present objection. Moreover, a theory that would demand more from us – for instance, by requiring that we sacrifice our own (or other people's) *personal* resources for the mere well-being of other people – would bear its own problems.

What concerns (ii), the argument is that classical libertarianism gives people just as strong private property rights to external resources as it gives people to their personal resources, which is implausible. As long as someone has legitimately appropriated a certain external resource, this resource becomes his own just as much as his body parts. According to classical libertarianism, this furthermore implies that no other agent is (non-consensually) allowed to use these external resources, even if

doing so would be necessary for saving other people's lives. For instance, 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. This is counterintuitive.

Mid-libertarianism avoids this implication. On mid-libertarianism, people do not possess any *fundamentally moral* rights over external resources. Such rights are incompatible with the requirement to use them so as to maximize utility, as is implied by the utilitarian proviso. If a resource that belongs to someone (i.e., in a non-moral manner) could be used by someone else in order to maximize utility, then that somebody else is allowed to do so. In the boat case, you would thus be allowed to use my boat in order to save the children from drowning.<sup>3</sup> 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.

Perhaps some would worry that this feature of mid-libertarianism, which grants *no* moral rights to external resources, is implausible. It seems that people should be given at least *some* private ownership over external resources, such as their houses or clothes. Although mid-libertarianism does not allow for moral ownership of external resources, it does allow (just like utilitarianism) for *derived* ownership, i.e., legal ownership, of external resources. The reason is that a utility-maximizing use of resources would require some legal protection of private ownership. The world would be a worse place without any such protection. Note, however, that such ownership is not fundamentally moral on mid-libertarianism. We shall get back to this in section 3, when we discuss objections to mid-libertarianism.

### 2.3 Mid-Libertarianism Avoids Some of the Main Objections Raised Against Utilitarianism

So far, I have argued that mid-libertarianism fares better than classical libertarianism, and that this is due to its utilitarian proviso. One might question, therefore, why we should not move entirely to utilitarianism rather than revising libertarianism into a more utilitarian-like theory. In this section, I answer this question by showing that mid-libertarianism can avoid some of the objections that have been leveled against utilitarianism. The objections I will consider are that (i) utilitarianism is too demanding, (ii) utilitarianism is impractical, and (iii) utilitarianism is too impersonal.

According to (i), which is called *the demandingness objection*, utilitarianism is implausible for implying too high demands on ordinary people in their ordinary lives. If spending all of your spare time on working for Oxfam would maximize utility, then utilitarianism demands that you do so. If donating all your organs to others in order to

<sup>3</sup> When I hereafter talk about "someone's" resources, or the resources that someone "has" or "possesses", I simply mean the resources that this someone effectively (e.g., physically) controls, thus neglecting the issue of whether these resources are their moral property.

save their lives, and doing so would be utility-maximizing, then utilitarianism demands that you do so. And this is, at least to many people, to demand *too* much.

Mid-libertarianism does not have these implications. Since it distinguishes between personal and external resources, and since the utilitarian proviso applies only to (and conditionally on the use of) external resources, mid-libertarianism does not demand that people sacrifice their personal resources – such as their own time or body parts – for the sake of others. Perhaps one might think that mid-libertarianism is too demanding nevertheless, since it requires that the external resources we have are used so as to maximize utility, but it is clear that mid-libertarianism fares at least better than utilitarianism from the view of demandingness.

According to (ii), which is sometimes called *the impracticality objection*, utilitarianism is implausible for providing too little practical action guidance. For one reason, agents often do not know (and cannot know) which of alternative actions will produce most utility (Feldman 2006). One of the reasons why utilitarianism is vulnerable to this objection, is that it takes into consideration *all* those acts that are available to the agent. Since it is practically impossible for the agent to assess *all* the consequences of *all* these acts, and *all* the values of all these consequences, she cannot know which act she morally ought to perform.

Mid-libertarianism, however, does *not* take into consideration all those acts that are available to the agent. The reason is that the utilitarian proviso applies only to those acts that involve the use of external resources, and is restricted only to those acts that do not violate any rights. This restricted sub-set of actions has fewer members than the total set of available actions. Moreover, on mid-libertarianism, the agent could always do right by doing nothing at all. Therefore, mid-libertarianism fares better than utilitarianism from the perspective of practicality.

According to (iii), which might be called *the impersonality objection*, utilitarianism is implausible for being too impersonal. This is partly because it rejects the separateness of persons. Utilitarianism is an *aggregationist* approach, implying that we may permissibly sacrifice the lives of innocent others, if doing so will produce more utility. For this reason, utilitarianism also rejects the self-ownership thesis, which means that it does not endorse any moral rights of individuals. Although this is something that utilitarians are well aware of, it is an implication that comes with certain costs. Indeed, many people have the intuition that it is wrong to sacrifice innocent people – even if doing so maximizes utility.

Mid-libertarianism avoids this implication too, since, on mid-libertarianism, people have fundamental moral rights over themselves. Hence, it does not allow that we sacrifice innocent others. If we want to make the world a better place, we are permitted to use only external resources (and our own personal resources) for such purposes. This permission is sanctioned by mid-libertarianism's rejection of fundamental moral rights over external resources.

## 2.4 Mid-Libertarianism Maintains Some of the Explanatory Powers of Utilitarianism

Mid-libertarianism does not only manage to avoid some of the main objections that can be raised against utilitarianism, it also maintains some of utilitarianism's explanatory powers. The main strengths of utilitarianism are the explanations it gives as to why one should help those in need, and why we should do the best we can with the resources we have. It explains in an intuitive manner why the rich should help the poor. Also, it manages to explain why our obligations to help others increase with the amount of resources we have (since the more resources one has, the more good one can do).

These recommendations are sometimes given by other moral theories as well, but the utilitarian explanation as to *why* we should perform such acts appear more straightforward: The right thing to do is to produce as much good as possible. Utilitarianism thus appears to point out *the right kind of reason* for why we should share our resources with others, and why the haves should help the have nots, and so on. In other words, utilitarianism appears to give the *correct* explanation to some of our widely held intuitions. Since mid-libertarianism endorses the utility principle as a proviso for use of external resources, it manages to yield many of these explanations too. It says that we should do the best we can with whatever external resources we have. Indeed, it does not imply any *unconditional* duties to help the poor, but it provides an explanation to our intuitions at issue that seems good enough. We shall get back to this in section 3.

## 2.5 Summing Up

Summarizing section 2, mid-libertarianism's combination of the libertarian non-aggression principle and the utilitarian proviso makes it capable of explaining intuitions such that:

- 1) We should not do bad to others; and
- 2) We should do good to others with the external resources we have.

Given that the utilitarian proviso is conditional on the use of external resources, whereas the non-aggression principle is non-conditional, mid-libertarianism also manages to explain the intuition that:

- 3) It is worse to do something bad (e.g., to kill someone) than to not do something good (e.g., to not save someone).

Moreover, since mid-libertarianism (just as other libertarian theories) distinguishes between personal and external resources, it can explain the intuition that:

- 4) It is typically worse to interfere with (e.g., punching, shooting, stealing) someone's *personal* resources (e.g., body parts) than someone's *external* resources (e.g., her money or belongings).

In virtue of the utilitarian proviso, mid-libertarianism also manages to explain the intuition that:

5) We should do as much good as we can with the external resources we have.

It also manages to explain an intuition that at least libertarians tend to have, namely that:

6) We are morally permitted to do nothing *at all* (i.e., given that we have not already done something that requires compensation).

Of course, these intuitions are only some of those (whose propositional content) we would want a moral theory to explain. However, whereas classical libertarianism appears to give the correct explanation *only* to 1, 3, 4 and 6, and utilitarianism appears to give the correct explanation *only* to 2 and 5, mid-libertarianism manages to give correct explanations to *all* of them.

Sure, mid-libertarianism does have some counterintuitive implications of its own. It seems, for instance, to imply that it is not better to do something good than to do nothing at all. These implications, and other potential objections, are discussed in what follows.

### 3 Answering Potential Objections to Mid-Libertarianism

Although mid-libertarianism has not been discussed in the literature, I will in this section defend it against some potential objections that could be derived from the current debate. First, I answer the objection that the utilitarian proviso, as situated in the mid-libertarian theory, is not an interesting proviso at all. Second, I answer the objection that mid-libertarianism is a too complex moral theory. Third, I defend mid-libertarianism against the objection that it yields too counterintuitive implications. Fourth, I answer the objection that left-libertarianism is, at any rate, a superior moral theory.

#### 3.1 Is the Utilitarian Proviso Really a Proviso?

As mentioned in section 1.2, most libertarians who accept a proviso think that it constitutes a condition for successful appropriation (i.e., a condition for when an appropriation results in private ownership). In my formulation of mid-libertarianism, however, the utilitarian proviso does not fill any ownership-generating function. Thus, one might question whether the utilitarian proviso is a proviso at all, and whether mid-libertarianism is a libertarian theory at all.

It is true that a fulfillment of the utilitarian proviso does not, on the mid-libertarian formulation, generate ownership in any fundamentally moral sense. However, it is not a requirement of a proviso that it fills such a function. As mentioned in section 1.2, the possibility of a libertarian proviso is due to the distinction between personal resources and external resources, and the fact that nothing follows immediately from the self-ownership theses with respect to the use, appropriation, or

ownership of external resources. Moreover, since the libertarian theory of appropriation implies that any form of *use* of (unowned) resources amounts to an (at least attempted) *act of appropriation* of those resources, a proviso should apply to any kind of use of external resources – whether or not a fulfillment of the proviso is supposed to generate private ownership. Locke, for instance, seem to have thought of the proviso not as a condition for successful ownership in particular, but rather as a condition for use of external resources in general (Locke 1690, Ch. 5).

Therefore, 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. In fact, mid-libertarianism is not the one and only libertarian theory that rejects the possibility to privately own external resources in a fundamentally moral sense. According to so-called *Joint Ownership Left-Libertarianism*, for instance, the world's external resources belong to humans *collectively*, which means that it cannot become *private* property (Cohen 1995; Vallentyne and van der Vossen 2014).

What, then, happens if one fails to satisfy the proviso? As mentioned in section 1.2, libertarians tend to disagree on how a failure to meet the proviso relates to wrongdoing. Still, they all think any proviso-violation requires *compensation*. The role of compensation is thus twofold in the libertarian tradition. First and foremost, it is considered as a requirement conditional on rights-violations. If I steal something from you, then I owe you compensation as rectification for that. Second, compensation is considered as a requirement conditional on proviso-violations. If I fail to meet the proviso for use of external resources, then I am required to compensate for this by doing something that leads to a situation that is normatively equivalent to the situation that would have obtained had I satisfied the proviso. Although libertarians typically forbid compensation to be used as a justification for rights-violations, they allow compensation to be used as a justification for proviso-violations. This means that agents have the choice either to satisfy the proviso or to pay compensation for violating it.

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.

This implies that if an agent uses a certain resource, and the maximally good usage (available to the agent) of that resource would produce  $n$  utils, then this compensation clause allows the agent to omit using them in that way if she produces  $n$  utils in some other permissible way. Of course, this cannot (initially, at least) be done by using external resources, since those resources should be used so as to maximize utility in the first place. What is left, however, are the alternatives to spend one's own time or personal resources on doing things for others that one would otherwise not have been obliged to do. For instance, if the agent could produce  $n$  utils by working one weekend for Oxfam, taking part of a medical testing program, telling stories

to orphans, singing to elderly, or donating blood or sperms/eggs or bone marrow or a kidney, or etcetera, then doing so would free her from the obligation to use these resources in a utility-maximizing way. In summary, therefore, the utilitarian proviso is not less of a proviso than other provisos in the libertarian tradition.

### 3.2 Isn't Mid-Libertarianism a Too Complex Moral Theory?

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.

One might think that complexity is problematic either *per se*, or for the problems that it gives rise to. What concerns the latter, one might think that mid-libertarianism's complexity is problematic because 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, as was argued in section 2.3, 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.

In response to this, two things should be emphasized. 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.

Second, 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).

This suggests that mid-libertarianism is not a more complex moral theory than any other version of libertarianism that comes with a proviso for use of external resources. Sure, this does not show that mid-libertarianism is not too complex, since these other theories might be too complex as well. This brings us to the worry that complexity is problematic *per se*. In reply to this worry, however, it should be mentioned that the standard of simplicity must be weighed against other standards for moral theory evaluation, such as the standard of explanatory power (Timmons 2012). If mid-libertarianism manages to explain our moral intuitions better than some rival moral theories (as I argued in section 2), then the fact that it is more complex is not decisive for its relative plausibility.

On that note, the simplicity standard operates in relation to the *reality* of morality. If morality is *actually* a complex matter, then simplicity is not as such a virtue of any moral theory. This suggests that the simplicity standard is all about *precision* – i.e., about how well a moral theory tracks the truths of moral matters. If there are actually two “moral laws”, as it were, out there (i.e., one that forbids rights-violation, and one that demands utility-maximization with respect to use of external resources), then a “complex” theory like mid-libertarianism would be more precise than “simpler” theories.

### 3.3 Doesn't Mid-Libertarianism Yield Too Counterintuitive Implications?

In section 2, I argued that mid-libertarianism can explain some of our widely held moral intuitions, and that it avoids some of the main objections that can be levelled against classical libertarianism and utilitarianism, respectively. Still, this does not exclude that mid-libertarianism yields counterintuitive implications nevertheless. In this subsection, I bring forward, and reply to, some charges in this regard. More precisely, I discuss the objections that (i) mid-libertarianism requires too much of us, and (ii) mid-libertarianism sometimes recommends us to do nothing rather than something good.

Starting with (i), one might argue that even if mid-libertarianism does not require that we donate our own organs or spare time (or other personal resources) to others, it still 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.

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.

Moreover, as was mentioned in section 3.1, mid-libertarianism allows that the agent does not redistribute her external resources in a maximally efficient way, if she makes sure to produce the same amount of utility (or more) by other means. If the agent can do so by working one weekend for Oxfam or donating a kidney, then she does not have to make the redistribution. This compensation clause of mid-libertarianism gives it an advantage as compared to utilitarianism with respect to demandingness, since utilitarianism would require that the agent in this situation redistributes her resources to others *and* works voluntarily for Oxfam during one weekend *and* donates her kidney. This, I think, shows that mid-libertarianism does not demand *too* much of us.

A more serious objection to mid-libertarianism is (ii), the objection that it sometimes recommends people to do nothing rather than something good. This conflicts with the intuition that it is always better to do something good than to do nothing. To see why mid-libertarianism yields this recommendation, reconsider the boat case (from section 2.2). Now, however, assume that you use my boat in order to save only *one* child, whereas you could have used it to save both children. Given that saving two children is better than saving one, mid-libertarianism implies that you acted wrongly and hence impermissibly. However, if you would not have used the boat at all, but rather stood by and watched both children drowning, then mid-libertarianism would not imply that you acted wrongly – but rather permissibly. This is a counter-intuitive implication.

This objection could perhaps be avoided if the utility principle's maximizing approach were replaced with a *satisficing* approach. According to such an approach, agents would not be obligated to maximize utility, but “only” to produce a satisficing amount of utility. However, this revision would be vulnerable to a structurally similar objection, concerning cases where the agent would produce just a little less utility than what is required in order to pass the threshold set by the satisficing approach. In that case, even a satisficing approach would recommend that the agent do nothing rather than something good.

There is one threshold that would not have this problem for the satisficing approach. This is the threshold that only requires an *improvement*, meaning that agents who use external resources are required to make the world a better place compared to what it would have been had they not used these resources. The problem with this approach, however, is that it would allow almost anyone to use almost anyone else's resource at almost any time, since it is almost always possible to make improvements with others' resources. In the boat case, for instance, you would be allowed to use my boat without my consent just for your own fun of it (given that doing so would be an overall utility improvement in the world).

Perhaps this is not in the end *that* problematic, since the world's external resources would thus eventually end up where they can produce most utility. If one finds this too problematic nonetheless, one could make revisions in the mid-libertarian axiology. A pluralist axiology that identifies other values than utility, or a non-welfarist view on utility, would perhaps do the trick. On such an axiology, non-consensual use of others' resources could be regarded as intrinsically bad, and thus

as something that should be considered when assessing whether a certain instance of resource-usage makes the world a better place. If so, mid-libertarianism would *not* allow you to use my boat as you wish.

At any rate, the implication that it is sometimes better to do nothing at all than to do something good is yielded by any moral theory – including both left- and right-libertarianism – that requires good-doing conditionally on the use of external resources. Adherents of mid-libertarianism could thus do as adherents of these other views, and just bite the bullet. All moral theories have counterintuitive implications in some cases (Vallentyne 2009). Or, they could try to find ways to debunk the intuition that it is always better to do something good than nothing at all.

### 3.4 Why Not Left-Libertarianism Instead of Mid-Libertarianism?

In section 2, I argued that the main argument for mid-libertarianism is that it can explain the rightness and wrongness of actions in a way that better accords with our intuitions than classical libertarianism. Since a roughly similar argument was given for left-libertarianism by its adherents when they introduced their theory, I should say something about how mid-libertarianism fares in comparison to left-libertarianism in particular.

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. More precisely, left-libertarianism accepts a proviso according to which use of external resources require that they are distributed in order to neutralize existing inequalities that stem from people's different internal (in)abilities which they possess through no choice or fault of their own. What distinguishes different versions of left-libertarianism is their view on exactly *what* it is that shall be equalized.

I shall here stick to what I think is the most plausible version of left-libertarianism, so-called *equal opportunity left-libertarianism*, which is advocated by Otsuka (1998, 2003) and Vallentyne (2007b, 2009). Quoting Vallentyne and van der Vossen (2014: 14), equal opportunity left-libertarianism

...interprets the Lockean proviso as requiring that one leave enough for others to have an opportunity for well-being that is at least as good as the opportunity for well-being that one obtained in using or appropriating natural resources. Individuals who leave less than this are required to pay the full competitive value of their excess share to those deprived of their fair share.

Having clarified that, I see three potential arguments for why left-libertarianism could be more plausible than mid-libertarianism: (i) left-libertarianism is a more coherent moral theory, (ii) left-libertarianism is a more practicable moral theory, and (iii) left-libertarianism has more intuitive appeal.

When it comes to (i), left-libertarianism's egalitarian proviso might seem to be more coherent with the non-aggression principle, than mid-libertarianism's utilitarian proviso. That is, it might seem that libertarianism's self-ownership thesis coheres better with the view that external resources should be distributed in an egalitarian

manner. However, if we think that there is an upside for left-libertarianism regarding coherency, then this is presumably because we think of the clash between libertarianism and utilitarianism when considered as separate moral views – i.e., as *mutually exclusive* moral theories. But mid-libertarianism considers the utilitarian principle to govern a *different* domain of actions than the libertarian principle. And there is no tension between a non-aggression principle that applies generally, and a utility principle that applies particularly to (and conditionally on) the use of external resources. So, if left-libertarianism is to be considered more plausible than mid-libertarianism, it cannot be for reasons having to do with coherency.

When it comes to (ii), the practicability issue, one may think that egalitarianism is more practicable than utilitarianism, since egalitarianism does not require as much of ordinary agents as utilitarianism. Egalitarianism does not require that the agent has knowledge about all the values of all the outcomes of all her available options. And since left-libertarianism endorses an egalitarian proviso, it appears to be more practicable than mid-libertarianism. However, if a utilitarian proviso is practically problematic for the reason that it is hard for agents to know which of alternative distributions will maximize utility, it seems that the egalitarian proviso will be equally problematic for the reason that it is also hard for agents to know which of alternative distributions will equalize people's opportunities for wellbeing. For instance, it seems quite hard to know which opportunities for well-being other people in fact have, and which opportunities oneself will obtain by using certain resources. It also seems hard to know what is the *equality level* of opportunity for wellbeing (i.e., the level that serves as a reference point for the egalitarian proviso). Hence, the practicality problem is not a problem solely for mid-libertarianism, but also for left-libertarianism as well as for many other moral theories (Feldman 2006; Zimmerman 2008). What is more, many of these practicality issues stem from empirical questions belonging to empirical sciences rather than normative ethics. Even if these are hard questions to answer, they are not ethical questions.

One might still think that left-libertarianism is more practicable than mid-libertarianism for the reason that it offers the agent *more alternatives* with respect to resource-usage than mid-libertarianism does. Left-libertarianism implies that when an agent has used more external resources than is needed for her equal opportunity for well-being, she has the choice to (i) return these resources to the commons, *or* (ii) redistribute the resources in a way that equalizes opportunities for wellbeing, *or* (iii) spend the revenues from her own excess resource usage on improving the situation of those who are worse off (in terms of opportunities for wellbeing).

However, similar options are offered by mid-libertarianism. Mid-libertarianism gives the agent the choice to (i) return the resources to the commons (i.e., stop using them), *or* (ii) redistribute the resources in a utility-maximizing way, *or* (iii) spend the revenues from such excess resource usage on any utility-maximizing action. As we saw above, mid-libertarianism also lends the option to (iv) use the external resources herself and then perform some other act that produces at least as much utility as a utility-maximizing distribution of those resources would do. Hence, mid-libertarianism is in this sense at least as practicable as left-libertarianism.

As regards (iii), concerning intuitive appeal, it might seem that left-libertarianism has more intuitive appeal (than mid-libertarianism) for the reason that it allows

for fundamental moral rights over external resources. As long as the initial act of appropriation satisfies the proviso, this act generates moral ownership over the involved resources. For instance, if you made sure initially that you did not use more resources when building your house than what needs to be left for others in order for them to have an equal opportunity for wellbeing, then this house would become your private property. That sounds intuitive.

We should recall, however, that even mid-libertarianism allows for some private external property, it is just that it does not endorse *fundamentally moral* external private property. And it is not obvious that this is less plausible than left-libertarianism's endorsement of such fundamentally moral property rights. Consider the boat case (from section 2.2) once again. If I made sure initially that I did not use more resources when building my boat than what needs to be left for others for them to have an equal opportunity for wellbeing, then on left-libertarianism that boat would be my private property. This means that on left-libertarianism I would not have any obligation to use it so as to save the drowning children, neither would you be allowed to use it to save these children. To me, the counter-intuitiveness of this implication carries heavier weight than the intuitiveness of the implication that some fundamentally moral private property rights over external resources is endorsed.

As this unveils, mid-libertarianism can, whilst left-libertarianism cannot, explain why it is typically worse to interfere with (e.g., punching, shooting, stealing) someone's personal resources (e.g., her body) than someone's external resources (e.g., her money). Moreover, mid-libertarianism can explain, whilst left-libertarianism cannot, why those who possess more external resources have a stronger duty to help others than those who have less.

As Vallentyne correctly notes, “[t]he real test of a theory is its overall plausibility – both in the abstract and in application over a broad range of cases” (2009: 7). Settling the battle between left-libertarianism and mid-libertarianism in this respect is beyond the scope of this paper. Suffice it to say that mid-libertarianism is not obviously less plausible than left-libertarianism.

## 4 Conclusion

This paper has introduced and defended a new libertarian moral theory: mid-libertarianism. This theory combines the libertarian non-aggression principle with a utilitarian proviso for use of external resources. Mid-libertarianism is inspired by the works of modern left-libertarians, but while left-libertarianism implies that external resources belong to everyone in an egalitarian manner, mid-libertarianism implies that they should be used in a utilitarian manner.

The main argument for mid-libertarianism is that its recommendations cohere better with our moral intuitions compared to existing versions of libertarianism. I have argued that mid-libertarianism maintains the main explanatory powers of these theories, at the same time as it manages to avoid their main troubles. I have also argued that it can deal with several other potential objections, and that it is at least not worse than left-libertarianism. In conclusion, mid-libertarianism is a new contestant in the normative ethics debate.

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