
DISCUSSION: MUST WE CHOOSE BETWEEN CHANDRAN
KUKATHAS’S “TWO CONSTRUCTIONS OF LIBERTARIANISM”?

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Introduction

Chandran Kukathas argues that we have a problem in how to understand Libertarianism, and that this problem requires us to choose between two views, each of which has uncomfortable implications. He begins by noting that “Libertarians believe that all individuals are entitled to live as they choose, free from interference by other persons or by the state. ... libertarians think that what is most important is to defend the freedom of individuals to live without being victims of aggression by others—against their persons, or against the property they have rightly acquired.” The liberty they defend is, of course, “only that liberty that is consistent with a respect for the liberty and property of others.” Right, of course: the general right to liberty entails precisely that. So as to governments, “its purpose is to protect individual liberty against invasion by others, whether at home or from abroad. Otherwise, it should leave people alone. What could be simpler?” Yet, he argues, things are not so simple: “there is more than one kind of society that could issue from such simple beginnings. Indeed, there are at least two very different societies which might be constructed out of such libertarian first principles.” He tags these the “Federation of Liberty” and the “Union of Liberty.”

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The “Federation of Liberty”

The first of these “recognizes two central axioms: the right to self-ownership and the right to ‘homestead.’” But people differ greatly, and “have different ideas about what is good and about what is right. The intuition libertarianism as a moral doctrine seeks to capture is the thought that when people differ in their ideas about what is good or right it is wrong to try to force people to accept one version or another, particularly if they are prepared simply to go their separate ways. Aggression—the initiation of the use or threat of physical violence—is never defensible. The use of force is permissible only in defense of one’s person or property.” So far, so good. But the question arises, what to do about the nonaccepters of Libertarianism. In what he takes to be the first version, the Federation of Liberty, “the answer is that the principle of libertarianism should be extended to cover not simply the treatment of those who believe in it but the treatment of all persons. That is to say, it would tolerate in its midst even those who do not accept the principles of libertarianism. ... If they will not aggress against libertarians, then libertarians will not aggress against them.”

So far, one would think, so good: that seems exactly what we are to do. But then, he says, there may well be “quite a few groups or communities which not only disregard but directly repudiate libertarian principles.” They don’t respect the private property of their members, say, or permit dissent from the group’s central dogmas. “Indeed, the freedom of the individual to leave the community or group may not be accepted, so that many people are effectively held within the community against their will.” And now the problem emerges. For “in the Federation of Liberty, those libertarians who do hold to libertarian principles will do nothing, for they cannot aggress against others except in self-defense. Or at least, that is how the principles of libertarianism are understood here. It simply is not permissible to initiate the use of force against others who are not threatening to use force against you or your property.” So, “libertarians really can do very little about those who repudiate libertarianism and work to perpetuate ways of living that do not respect or value liberty.” This is possible “because the practice of nonaggression is understood to require that people not intervene in the activities of others except in defense of their own rights and property.”

But in one very important respect, this is misleading, or perhaps downright wrong, depending on what Kukathas meant. In libertarian theory, when anyone commits an injustice against anyone else, the victim may “defend himself” in any way that does not inflict further injustice on some third party. But one of the ways in which he may defend himself is by enlisting others who would be acting voluntarily, either out of sympathy or for money, or some other reason. The “very little” that can be done about

“those who repudiate libertarianism” could be quite a great deal, if the victims of these illiberal activities are able and inclined to do what they can to enlist these others. To take an important example, most property protection in North America is done by privately hired guards. Companies, and the few individuals who also hire such people, are protected by others, but those others, in accordance with libertarian principle, do not attack innocents, and do act voluntarily.

Kukakis recognizes this, but he thinks it does not go very far. “But this does not resolve the problem of what happens to those who are unable to appoint agents to act for them.” But why are they unable? This matters. In communities such as those Kukathas is (understandably) concerned about, there will be the important case in which, due to brainwashing, perhaps, or for some other reason, the victim is unable to engage in those enlisting activities. What about that? Are we to do nothing—and is our doing nothing something that should worry a libertarian?

An important question here, I would note, is whether someone may help on spec: that is, attempt to liberate this person on the basis that he *would be* grateful for the liberation *if* it succeeds. On this point, essentially, Kukathas argues, “Even in a world of entrepreneurial would-be agents looking for principals needing to be freed, such potential agents have no right to demand that those they suspect of violating rights allow them to inspect their premises or their records. Such would-be agents may not use force to gain access to knowledge of rights violations, or to gain knowledge of the wishes of people who might want to employ their services.”

But is this altogether true? Libertarianism is sometimes construed in a way that would indeed be susceptible of this criticism. Suppose you have a gun, and it is aimed at me. May I intervene to prevent you from pulling the trigger, even perhaps by shooting you first? Some seem to say No. Do they mean it? I don't see how they could. We have the *right* to *defend* ourselves. What would be the meaning of “defense” if the only permissible form of it was exacted compensation or punishment for crimes actually committed?

Kukathas says, “It simply is not permissible to initiate the use of force against others who are not threatening to use force against you or your property.” Right—but after all, it is people who *are* threatening to do this that we are concerned about here. If I may defend myself against someone *trying* to kill me, even though he has not yet succeeded and thus not as yet violated my right to life, as such—yet, may I not defend myself against someone *threatening* to do so? There is, of course, the sometimes very difficult question of when we should say he is doing this. For example, suppose a boy attends a terrorist school where he is indoctrinated with justifications for murdering all

of those belonging to some large class, of which I happen to be a member. Is he threatening *me*? Well, yes! Not, of course, me *in particular*: but he *is* threatening a class I belong to. Do I get to defend myself, and others in that class, by bombing that school? My point is not that the answer is obviously in the affirmative, but that it is surely not obviously in the negative either.

Kukathas suggests, further, that “under this understanding of libertarianism it is quite possible, in principle, for the Federation of Liberty to be made up of only a minority of persons who accept the principle of nonaggression, if a majority of persons live in groups where aggression within the group is condoned or unchecked. Indeed it is possible, in principle, that *no one* accepts the principles of libertarianism. The principle of nonaggression operates only between groups or communities, since no one will use force to intervene in the activities of those whose actions do not aggress against them or their property.” And he raises the question, “But can this really be a libertarian society?” He does not define the notion of a ‘libertarian society,’ and since it is not a very clear term, that makes it a bit difficult to assess the matter. I suggest two construals as reasonable.

What is a “Libertarian Society”? Two construals

(1) One construal of the expression would be that a “libertarian society” is one in which everyone accepts the libertarian idea, and also lives in accordance with it. Clearly, no one could dispute that *that* would be a “libertarian society.” On the other hand, certainly, his example in which *no one* accepts libertarianism would clearly not be such a society. But all societies will lie somewhere in between, and when we should say that we have a “libertarian society” is not easily answered, though presumably we should say that a society approaching the former surely is, while one approaching the latter is surely not.

Indeed, and obviously, no society we know of is a libertarian society in that idealized sense. The question would be how much of an approximation is enough to qualify. For example, in North America today, I would guess that a very high percentage of the population pays at least lip service to the libertarian principle: they agree that one should not get one’s way by aggression. But on the other hand, an extremely low percentage is willing to apply that principle in any sort of thoroughgoing way to the activities of their governments. Indeed, people being what they are, quite a few of them would no doubt also be rather variable in their adherence to the principle in personal relationships—occasionally some who agree that we are not to aggress against those who disagree with us will nevertheless haul off and sock one of them. The question is, what hangs on this?

Kukathas rightly brings up the question of societies whose members are in some ways *forced* to refrain from listening to libertarian ideologies or read libertarian books or the like. In the extreme case, as he says, some might even be slaves. Now, is this compatible with being a libertarian society in any sense? Not in the sense just described, certainly. But again: so far as I can see, the members of the "Libertarian Federation" have it right: we really do *not* have the right to compel people to listen to libertarian preaching, just as the folks in that society do not have the right to compel people in their community to refrain from doing so, nor to listen to their own preaching. But there will be a special problem about children, on which I will expand further below. Meanwhile, the question for Kukathas is this: *if* and insofar as adults (at any rate) in some of those communities are genuinely *forced* to listen to sermons or *forced* to refrain from listening to libertarians of whom they happen to get wind, why wouldn't those in the Federation have a perfect right to intervene, *provided* that those desiring to do the unpermitted listening *want* to be free to do it? And in fact, if they *do* want to conform to their communities' practices in those respects, then how can we say they are being "forced" to act that way? And this, it seems to me, is where Kukathas's dichotomy thesis begins to unravel. To get more insight on this, let's turn to the other way in which we might construe the notion of a "libertarian society."

(2) On this other construal, a "libertarian society" would be one in which the official governing philosophy, incorporated into its political constitution, is libertarian. But what if there is no political constitution, as the anarchistically inclined among libertarians insist there shouldn't be? But still, what we may call the uniform prevailing moral orthodoxy would be libertarian: that is what people would appeal to when they object to some kind of transaction, or when they attempt to correct what they take to be a violation of it. There is more than a trace of this in, for example, the American Bill of Rights and the Canadian Charter of Rights and Freedoms. But it needn't be written down to be, nevertheless, the *de facto* intuitive charter of the society. Then the question is how well and effectively applied this official commitment will be in actual practice (literally official in the political one, where there are officials, and in the anarchic version, the lip-service-payers.) What we may surmise—again, human nature being what it is—that it would likely be: not very!

So, for example, his hypothetical Federation of Liberty "does not condone the initiation of the use or threat of physical force against the person or property of anyone. Yet, perversely, this turns out to be a society in which many people end up being *free to use force*." But this too is misleading. They are not "free to use force" in the sense that they *have the right* to do so.

Nor in the sense that the libertarians among them agree that they have such a right, for of course they don't—they deny it. Rather, the sense is that they *get away* with it because none or too few are willing to intervene—officials in the governed case, and ordinary people in the anarchist case—even though they have a perfect right to do so and know perfectly well that they do. But that, after all, is an important distinction. And only by eliding or overlooking it can Kukathas's characterization get off the ground.

The “Union of Liberty”

The point of his article is to call attention to a distinction between two construals of what a libertarian society is. His first one, as we have seen, was the “Federation of Liberty,” with what he takes to be the consequences I have been looking at above. I deny that it has those consequences as he has described them. Either the members of those communities are not in fact being forced, literally, to belong to them or adhere to their ways, or the rest of us do have the right to intervene, with force if need be—even though we might very well, being weak and weasly, not wield the force we would have the right to.

Then we are introduced to the allegedly other libertarian society, the “Union of Liberty.” Interestingly enough, it subscribes to precisely the same principle as the Federation. However, the Union has a different answer, he thinks, to the question “What should be libertarianism's attitude to those who disagree with libertarian principles?” Its answer is that “the principle of libertarianism is not one that people may choose not to adopt. The principle holds for all persons, in their dealings with all persons. What is the point, after all, of a moral principle that does not apply to all?”

What indeed? But now there looms a large question—whether this isn't what an old professor of mine used to refer to as “a distinction without a difference.” Kukathas says, recognizing that after all some groups may explicitly embrace—in light of the freedom of association, after all—practices that are nonlibertarian. And if they do, then what? Well, “no one is permitted to live without liberty unless he has explicitly relinquished those particular liberties he lacks.” So all associations would be founded on consent, including those which are internally repressive, or at least internally non-libertarian. All of their members would have explicitly embraced the nonlibertarian principle for their mutual dealings.

But, wait—does this make sense? When I make a contract with you, after all, I abandon the liberty to do whatever I like: I accept an obligation to do my part, provided you do yours. Is this non-libertarian? Of course not. Or suppose that you and I form a suicide pact, and we live up to it. Is *that* non-

libertarian? I think not. Indeed, suppose that you and a hundred others decide to become devout Christians, denying yourself many pleasures that others feel free to avail themselves of. Again: surely perfectly consistent with libertarianism.

There are people who talk of a kind of "liberty" that is quite different from the sort of thing we libertarians have in mind. Some aim to free themselves from the "rule of desire," for example, or assorted hobgoblins of the mind, or the fetters of rampant materialism. Well, say we libertarians, good luck to you! That's none of our business. What we are concerned about is interpersonal aggression—not hobgoblins. And so long as the various communities in his Union of Liberty do not literally compel their members, in a sense in which they are genuinely being forced to do what they don't want to do, we really do have to let them go to it. I see no possible difference of "two libertarian communities" here, then.

The Problem of Children

Kukathas rightly addresses the special case of children. A big problem with any such discussion is, however, that children really are such special cases. It's hardly surprising that this should be so. For what *makes* them "children," after all, are features that also make it difficult to qualify as a "libertarian" in a full-front sense of that term. Don't their parents get to intervene quite extensively in their very young lives, including by at least some application of force? While I think that a serious and difficult question, surely the standard answer is: Yes, they do. Mill was not far off the mark when he explicitly limited the application of the Principle of Liberty to adults in reasonably normal conditions, and denying its direct and full application to "children, idiots, and savages." Later on, after they have grown up—whenever that is—those children may renounce everything their parents tried to do for them. Right—but not *now*, while they are yet children; and their neighbors may not intervene to prevent those parents, by force, from doing this to them. Or at least, we would need rather extreme denials of rights by parents to permit such intervention. (More extreme, indeed, than typical contemporary societies, with their quasi-fascist "Children's Aid Societies," tend to allow!)

Kukathas says, "The younger the children, the greater the interference with their liberty, and less often their consent is sought." But the trouble is, the younger the children, the less obvious that they do have what can straightforwardly be held to be the right to general liberty. We do *not* discuss with the children the question whether they shall be permitted to go out in the streets late at night, and they may *not* discuss the question whether they,

like their parents, shall be vegetarians. Parents do have rights, and those rights include rights over their own children. They may do a lot more things to those children than you or I may, or than the surrounding society may. How much is indeed a vexed question.

The point is that Kukathas's, and our, subject should really be defining the permissible actions in a society conforming to libertarian principles insofar as its members are grown-ups, capable of having the ideas and interests that form the background to political institutions and discussion. Children are too difficult and special a case to count as counterexamples without severe qualification.

... and Women (among others)

But of course he is entirely right to raise the question of internal communities who deny familiar freedoms, for example, to women, or of course members of ethnic minorities and the like. As he says, "Liberty can be given up by those consenting to the actions of those who choose to deprive them of it. But it cannot be taken away."

Agreed. But then, in the Federation of Liberty, if those women should object to this practice, others *are* permitted to help free them of this perceived bondage. It would probably entail leaving that community, to be sure. But then, that community has no obligation to keep them on, against their will, as members. It can surely say: "If you want the freedom to have sex outside of marriage, or to drink martinis, or to eat meat, or ..." —then you are not welcome among us!" However, all of those people—women, or anabaptist-inclined, or whoever, would absolutely have this right to leave that community and its, in their view, repressive practices. And others would have the right to help them escape. (Huckleberry Finn really *was* doing the right thing, was he not?) Those within the community wielding force over miscreant members who objected to that treatment would be subject to forcible restraint by others acting on behalf of the objectors. *That* is what could permissibly happen under libertarianism.

Differences in the Understanding of Liberty

Now, Kukathas sums this up as follows: "Liberty must be enforced if a libertarian society is to prevail." This, I take it, is simply true. But it was true in the Federation as well as the Union. So far, I see no difference.

Kukathas thinks there is a difference: "The implications of this outlook, however, need to be recognized. The first, and fundamental, implication is that there can be only one authoritative understanding of

liberty. While people may in fact have different views about liberty, only one view of what liberty means and what liberty demands can provide the standard by which conduct is judged."

True, again. But also, true of both the Federation and the Union. Note that libertarians do tend to disagree with each other about just such matters. Or rather, persons claiming to be libertarians do so ... and thus there are journals such as this one! Somehow, we don't all seem to understand the implications of the liberty principle in exactly the same way. But still—presumably some of us really are in the wrong and others in the right. For there is, after all, just one correct basic idea— "The Libertarian Idea," as I expressed it in my book of that title. (But which one *is* it? Well, that's what is to be discussed.) What I deny, however, is that there is a bifurcation of the type he urges, as opposed to differing shades of opinion about how to understand Liberty.

Differences in the Uniformity of Authority

"Second, and following from this, there cannot be a multiplicity of authorities with the right to set standards of conduct. If there were more than one authority, there could in principle be more than one understanding of liberty. Indeed, there could be authorities which would compromise liberty in favor of other values."

But on this point, I think Kukathas is again misleading. Parents have authority over their children, to some extent not easy to identify, but certainly considerable. Roman Catholics acknowledge the authority of the Pope, and we atheistical libertarians recognize that they do. The secretary of my department has authority over the disposition of rubber bands. The umpire in a baseball game authoritatively pronounces the pitch a "ball" or a "strike," and we fans recognize that, even if we may think him in error on this or that occasion. Kukathas surely cannot mean to deny such things? The authority of which he speaks, in order for there to be a systematic difference of the kind he argues for, would have to be the *ultimate* authority of, say, the liberty principle itself. Well, we agree that *that* can't be variable. Nevertheless that ultimate authority of the Liberty principle is clearly compatible with the recognition by all sorts of people for all sorts of purposes of authorities of various kinds. (And of course he cannot mean that there is at the end of the line one *person* with the "ultimate authority" I mentioned. For no one has that. Political and moral principles simply are not the deliverance's of somebody or other with the "authority" to lay them down.)

In short, it seems to me that we must reject this: "In the Federation of Liberty, there are many communities and, so, many systems of law; and the

prohibition against intervention means that some of the systems of law will not be libertarian in character, since they condone aggression against persons and their property. In the Union of Liberty, if intervention is permissible to stop or avert aggression by some against others, it must be permissible only according to law..." (which raises the obvious but crucial question—yes, but “what law is this”? That can only mean: just which “law” *is* the Libertarian Principle? And that’s a question requiring thought and discussion, for sure—but not disagreement on whether a given use of force is permissible against what is really a violation of liberty. Rather, disagreement about *whether* this or that act *is*, in the circumstances, such a violation.)

The Federation, he says, does not condone intervention in its communities’ internal affairs even if they are nonlibertarian, whereas the Union does. But I do not see this. We cannot intervene to prevent A from doing something to B which B accepts being done to him, even if it looks to us like aggression. Conversely, we *can* intervene to rescue someone in distress from aggression if that is how the victim of that aggression actually views it. (And it’s often, after all, entirely obvious that it is how he would view it—almost nobody actually *likes* having his wallet stolen!)

But is it true that “Now the implication of this is that there will be a central judicial body with final authority”? And thus to “a strong central authority”? This is as much as to say that the Union is committed to the State—presumably the minimal state—while the Federation can remain anarchist. But this too must be denied. Any differences among these points could crop up in either a statist or an anarchist libertarianism.

Conclusion

Kukathas draws a somber conclusion: “... the choice confronting libertarians is an invidious one. ... The Federation of Liberty can, in principle, turn out to contain no communities of that federation which actually value or respect liberty; and even slavery might have a lawful place within it. The Union of Liberty, on the other hand, can, in principle turn out to be society ruled by a strong authority with little respect for dissenting moral traditions, including some self-styled libertarian moral traditions.”

As we have already seen, no such choice needs to be made. The one libertarian principle calls upon us to permit all voluntary association. It allows intervention to correct involuntary association, except in the case of relations of parents and children, the latter being not yet exactly persons. But the criterion of voluntariness is difficult, since people frequently submit themselves to authorities, even to ones who are authorized by those persons

to use force against them. And it does not *require* us to intervene to correct injustices generally.

It is indeed not exactly clear what a "libertarian community" would be, beyond one in which relations among individuals and groups are fundamentally voluntary. But there is no difference between (1) *allowing* and (2) *forbidding the disallowing* of various practices, and that is the distinction which in essence the Federation versus the Union is defined in terms of. And the question whether to attempt to realize the libertarian principle better by erecting a single government with the kind of authority governments by definition have, versus making do with a fully anarchic society, is, I think, not settled to this day. Fortunately, as I have argued, the choice is not required by the alternatives Professor Kukathas's interesting essay poses for us.

Interestingly, he opts for the Federalist view, objecting as against the central authority he attributes to the Unionist view that "While authority may be necessary in human arrangements since disagreements have to be settled, no power should be established as the final court of appeal from which no dissent is possible." I'm certainly with him on that one. But of course that leaves us with the question of what we do instead. We do indeed, every now and again, need human affairs to be settled. However, this too is a question on which some progress has been made. "Settled enough to do" is very frequently possible, and perhaps anything further is beyond hope anyway.

In short: the libertarian principle remains univocal: no aggression against those not themselves guilty of any aggression. And therefore, no aggression against those with whom we disagree, including about the legitimacy of the libertarian principle. But, certainly, we may use force against those who compel others to go along, with whatever. The touchstone remains the liberty of the individual.