

Missile: A Libertarian Analysis of Positive Obligations*

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A picks up B¹, bodily, and tosses him, like a human missile, into C. A is the strongest of the three, B, intermediate, and C, physically weakest. When a strong person, in our little scenario, impacts a weaker one, the latter suffers grievous bodily harm, the stronger is impervious to any injury.

A is clearly the criminal here. B is innocent of any crime. True, it is B's body, not A's that directly impacts and injures C, but A indirectly did so, and is, as a result, the only culprit herein.

Let us consider B's route, from where he stood when A launched him into the air, until he reached C. There are two possibilities. One, the shove was so strong that B has no option but to collide with C and thus violate C's rights. In that case, our analysis is as it was before. There is total guilt for A; none for B. B was no more guilty than an inanimate bullet, or missile. But there is a second possible situation. The launching of B at C on the part of A was strong enough to impact C with full force, but only if B does nothing to slow himself down, but not so forceful that B cannot put on the brakes: dig in his heels so as to either impact C less forcefully, with less harm to C, or not at all by diverting his path, so that C would be completely unharmed.

Is B legally obligated to slow down and thus weaken his impact with C? Of course he is. No one could deny this. If B is able to do so, but purposefully refuses to engage in such an action, then, he becomes, along with A, a criminal. B becomes a lesser criminal than A, to be sure.² Why? Surely it is more blameworthy and hence more culpable, to engage in an illegal act, as A did, than to refuse to prevent, or lessen, the results of such criminal behavior, as we are positing that B did.

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¹ I owe a great debt of gratitude to Guido Hulsmann. The idea for this paper is based on a dinner conversation I had with him. Needless to say, but I will say it anyway, he is not responsible for any errors in this essay. I take full responsibility for them,

² If B is unconscious, or drugged, or hypnotized by A so that he is unable to slow down, then once again no blame can be laid at his door.

However sensible and reasonable is the foregoing, there is one serious difficulty with it. In addition to the non-aggression principle of libertarianism, and private property rights based on initial homesteading and later voluntary interaction,³ there yet another foundational aspect of libertarianism: there are no positive obligations. There are only negative obligations. It is illegal to murder, rape, kidnap, steal, engage in fraud, etc. But a person is not obligated to stop any of these nefarious acts either. He is not obliged to come to the aid of anyone else.

So if B merely continues on his A-caused path toward C and does exactly nothing to slow himself down on this route, or to change direction so as to not impact C at all, is he or is he not guilty of assault and battery or even murder, of C? That is, is B guilty of a crime due to his non-action to prevent or lessen his impact with C?

One might think that the “no positive obligations” aspect of libertarianism might save a “lazy” B who refuses to slow down or stop his path to C, from the charge of criminality. If so, that would be an error. B is indeed obliged to help C, but not for that reason.

To see this, we must resort to “bagel” or “donut” theory.⁴ Picture one of those culinary delights. Label the hole in the middle, X. The bagel itself should be called Y and the area surrounding the bagel,⁵ Z. Is a person entitled to homestead a patch of land in the Y format? No. This is because he would then be controlling area X⁶ without ever having homesteading even a single square inch of it, and this too is a violation of libertarian law.

Does the owner of Y have an obligation to allow others now in area Z to build a path through his property so that those in area Z can access the X territory and homestead it? Yes. And this for two reasons. First, there is yet another basic element of libertarianism: one may homestead any and all virgin territory, and X certainly qualifies. According to a motto in an entirely different context: “Do not suffer a witch to live.” The libertarian equivalent would be “do not suffer a square inch of virgin territory to remain in that state;” e.g., let there be no limit to owned terrain.

But is this, then, not a positive obligation on the part of B? Does it not constitute compelling him to slow down, or change direction, so as to minimize or avoid damage to C? No. Rather, it is required of B so as to prevent him from becoming a criminal.

We have now established, at least to our own satisfaction, that sometimes, perhaps rarely, it is incumbent upon folks to engage in what would otherwise appear, superficially as an act of positive obligation, but is in reality no such thing. Rather, it is a requirement to disassociate from criminal behavior. This was precisely the case with Y. He was obligated to allow Z to have access to X. It was not a violation of the rule against positive obligations. If he did not do so, he would have been guilty of precluding, or forestalling: preventing Z from access to X which he had every right to engage in.

Now, let us return to B. He, too, if he does not act so as to benefit C, can be considered as a criminal? If he does not put on the brakes or engage the steering wheel so as to soften or avoid his rendezvous

³ On this political economic philosophy, see Albright, 2013; Bergland, 1986; Block, 2009, 2013, 2017, 2019; Block & Chavez Salazar, 2018; Boaz, 1997; Crepelle & Block, 2017; Friedman, 1989; Hoppe, 1993; Hospers, 1971; Huebert, 2010; Loo & Block, 2017; Miron, 2010; Murray, 1997; Narveson, 1988; Nozick, 1974; Rockwell, 2014; Rothbard, 1982; Woods, 2013.

⁴ Kinsella (2007) has characterized this as the Blockian proviso. For more on this see Block, 2004, 2010A, 2010B, 2010C, 2016, 2021; Block & Nelson, 2015; Dominiak, 2017; Long, 2007; Todd, 2019.

⁵ Donut, for non-Jews.

⁶ In saying this we assume there are no helicopters, no bridges, no tunnels, no super duper pole vaulters, etc.

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with C, he will be guilty of a crime; the same one of which Y would be guilty were he to prevent Z's access to X: precluding, or forestalling. Just as Z has a right to X, so does B have a right to his own life and/or bodily integrity. Both Y and B are placed in awkward positions. Non-action on both their parts will be unjust, in that it will be part and parcel of a rights violation.

Let us now consider the next case in our analysis. A parent brings home a newborn from the hospital, puts the baby in a crib, and then refuses to feed him. Is such a father or mother guilty of a crime? It will come as no surprise that we answer this question in the positive. Of course to do so would be criminal. The crime is one of controlling a person, in this case the infant, without having the right to do so.

With land homesteading, once is sufficient. Once you have fully homesteaded real estate, you own it. Matters are different with children. You cannot own them, of course. But you can indeed own the right to be their guardian. How do you do so? First, give birth to the child, and then guard him.⁷ The parent who will no longer feed, diaper, or care for the baby is akin to a Y who improperly controls X, or to a B who declines to aid a C as best he can. Such a parent is not obliged to care for the child, but if not must then bring him to an orphanage or a hospital or a police or fire station or a church or some such other place. And this, too, is not a positive obligation. Rather, as in all these other cases, it is necessary to ward off a valid charge of criminality.

Suppose, now, that you find an unconscious man on your front lawn. He is obviously in need of emergency help, otherwise he will surely die. Under Good Samaritan laws you are obliged to help him. At the very least, you lazy bum, you should call the police or an ambulance or some such.

What about under libertarian law? Here, there are no positive obligation provisos that kick in. You are not legally required⁸ to lift even your smallest finger to aid him. Nor will our considerations of B and Y compel you to do any such thing to ward off a charge of criminality. The proscription against positive obligations does have some impact, after all.

Let us now make the example more difficult for ourselves. This man is no longer on some front lawn, where everyone else in the neighborhood can readily see him as they pass by. Now, we assume, instead, that he is inside your house, where no one else can see him. You are not at all hiding him. Perhaps you left your door open and he staggered inside when you were not at home. He is not a criminal trespasser. He had no mens rea to violate your property rights. He is entirely innocent of any crime. He will still perish without your help. Do you have any obligation to come to his aid? No.

We do not much like this answer. But our job here is to probe the depths of libertarianism, not to guild that particular lily. Our goal is to give an accurate rendition of this political philosophy, warts and all if needs be. We want to unearth whatever it is that is deducible from basic libertarian principles.

A similar situation arises with people drowning in a swimming pool. They are calling for your help; to throw them the life preservers just sitting there at the side of the pool. All you have to do, you cur, is toss them to the drowning people. You refuse. You enjoy watching them drown. Are you a criminal according to libertarian legal code? No.

It is time to put a bit of a positive spin on libertarianism. So far, it appears far too much like a devil's

⁷ As long as you do so, you are the proper parent. Your rights to your child outweigh some other potential parent, such as a wealthy man like Bill Gates who we can stipulate give your child a better life than you can.

⁸ Are you morally required to do so? That is a question outside the purview of libertarianism, which is concerned, solely, with law.

legal code. The difficulty with positive obligations is that they are unending. If required by law they logically imply massive death, paradoxically, and the end of civilization. How so?

We have all seen those heart-rending advertisements for aid: “This is little Maria. She will starve to death unless you donate, right now, to a charitable foundation.”⁹ The point is, there are indeed many starving people all over the world. If there are really positive obligations to all these downtrodden folk at least to the extent of banishing poverty world-wide, then people in affluent countries will have to stop investing, innovating and inventing for the betterment of all mankind in the future, and help out, right away, those in dire need. That will pretty much spell the end of research for a cancer cure, stroke, and other dread diseases, the solution to which is not on the immediate horizon. Education, too, will have to take a great hit as will infrastructure, building, etc. Paradoxically, it is reasonable to suppose that more people, not fewer, will die as a result of the implication of this virtue-sounding but ultimately pernicious system of positive obligations. Nor is it exactly clear why locals in the swimming pool are more deserving of aid than people in other continents, far away. Mere geography cannot be allowed to play such an important role in law.

The utilitarian case for this philosophy is starving babies, drowning swimmers and aid for unconscious people who end up on your front lawn or inside your front door. They are, in virtually all cases, based upon entirely made-up scenarios, the purpose of which is to tug at our heartstrings. They are merely theoretical constructs. They should not deter us from rejecting the philosophical doctrine of positive obligations.

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⁹ We abstract from the possibility that this is a scam. Your donations will actually help the poor.

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