

A CRITIQUE OF LESTER'S ACCOUNT OF LIBERTY

DANNY FREDERICK*

1. Introduction

IN *ESCAPE FROM LEVIATHAN*, J.C. Lester argues for what he calls “the compatibility thesis.” This thesis states that, in practice, and in the long term, there are no systematic clashes between interpersonal liberty, general welfare, and market anarchy (Lester, 2012, 2). Lester offers an explanation of the conception of liberty expressed in this compatibility thesis as absence of imposed cost. He argues (2012, 3-4, 57, 60-61, 75-76, 78) that this conception:

- (a) articulates the principal commonsense understanding of interpersonal liberty, which is also that defended by liberals and libertarians;
- (b) advances no moral claim and involves no moral notions;
- (c) characterises liberty in such a way as to make the maximisation of liberty equivalent to the maximisation of welfare and to free-market anarchy.

He further explains that this conception of liberty does not *by itself* entail a particular system of property or the maximisation of welfare

*Danny Frederick (dannyfrederick77@gmail.com) is an independent scholar. His professional information is available here: independent.academia.edu/DannyFrederick. My thanks to two anonymous referees and the editor for their helpful comments on the paper. The usual caveat applies.

CITATION INFORMATION FOR THIS ARTICLE:

Danny Frederick. 2013. “A Critique of Lester’s Account of Liberty.” *Libertarian Papers*. 5 (1): 45-66. ONLINE AT: libertarianpapers.org. THIS ARTICLE IS subject to a Creative Commons Attribution 3.0 License (creativecommons.org/licenses).

(construed as want-satisfaction), though he suggests that it does entail such things in conjunction with available social scientific evidence (2012, 61).

In this paper I argue that Lester's claim (a) is false and that, while his claim (b) might be true, his arguments assume the truth of familiar libertarian moral assumptions which are at odds with his conception of liberty. I also show that his claim (c) is false. In section 2, I explain Lester's account of liberty as absence of imposed cost. In section 3, I show that Lester fails to rebut two claims: that his conception of liberty is illiberal, and that it is inconsistent with the maximisation of welfare. In section 4, I show that observing liberty in Lester's sense is inconsistent with libertarian property rules. In section 5, I further explain that maximising liberty in Lester's sense is inconsistent with free markets and with the maximisation of welfare. Section 6 concludes.

Lester's book has been the subject of a number of critical reviews. However, these reviews discuss Lester's chapter on practical rationality (Machan 2001; Brooks 2002), which I ignore here, or libertarianism in general and its real or alleged problems (Barry 2001; Brooks 2002; Cohen 2002; Otteson 2001), or objections to Popperian critical rationalism (Otteson 2001). They do not attempt to grapple with the logical defects at the heart of Lester's account of liberty and his defence of the compatibility thesis. The exception is Gordon and Modugno (2003), to which I refer in passing.

2. Imposed Costs

Lester's account of imposed costs is complex and not easy to comprehend in one attempt. I will set out his major claims before offering a systematic exposition. Lester asserts: "*liberty is the absence of imposed cost*. In the event of a mutual clash of imposed costs, *observing liberty entails minimizing imposed costs*" (2012, 57). For Lester, "imposed cost" is a technical term, in both its parts. First, a *cost* is subjective: "[a] 'subjective cost' is, roughly, a loss of what one wants; a benefit is a gain" (2012, 58); and "costs consist of the foregone opportunities of decision-makers" (2012, 60). Thus, "the 'cost' I am using *is* an opportunity cost (so there is no inconsistency with economics), but it must also be *imposed* to be unlibertarian" (2012, 60). Second, what it means for a cost to be *imposed* is explained in the following passages:

liberty is here formulated as people not having a subjective cost initiated and imposed on them (that is, without their consent) by other people (2012, 57). The topic here is interpersonal liberty: the absence of initiated constraints on people by other people; or, more precisely, people interacting voluntarily without constraining, interfering with, or imposing upon each other—except to prevent or redress initiated constraining, interfering or imposing (2012, 58).

Obviously, such prevention and redress do not themselves *initiate* constraining, interfering, or imposing (2012, p. 210n70). As 'imposing' seems the most general of these terms, I shall stick with that... Positively initiating an imposition on another is to be contrasted here with merely withholding assistance, or with defense or redress (so not just anything that anyone else might do could be described as 'imposing') (2012, 58). I can now define 'interpersonal liberty' as 'people not having a subjective cost initiated and imposed on them by other people'. Or, for short, 'liberty is the absence of imposed cost' (2012, 58-59)... There is not a consistent, objective, and causal difference between the results of mere action and inaction. So active and passive impositions will not require separate treatment. (2012, 60)

Unfortunately this appears rather sloppy. Does the parenthetical "that is, without their consent" refer back to "initiated and imposed" or only to "imposed"? It seems to be the latter, because "imposing" is contrasted with "voluntarily," and because some imposings, namely, those which prevent or redress initiated imposing, do not count as "initiated," even though they are done without consent. So, something is imposed on a person if and only if it is done without that person's consent. But such impositions infringe liberty if and only if they are initiated. It is therefore a recipe for confusion when Lester says that "for short" liberty is the absence of imposed cost. For that means he is sometimes using "imposed" to mean *initiated and imposed*, which infringes liberty, and sometimes to mean merely *imposed*, which need not infringe liberty; yet the distinction between these is crucial in his account. However, since the weak sense of "imposed" just means *without consent*, we can stop using the term in that weak sense and talk instead of the absence of consent. So I will henceforth use "impose" in the strong sense, as involving an initiation as well as a lack of consent. Lester seems normally to use "impose" in the strong sense, too, as when he says that liberty is the absence of imposed cost.

The term "initiated" is not defined. It cannot be equated with "acted to bring about," because preventing or redressing an unconsented-to cost-bearing is usually an action, but it is not an initiating. So some actions are not initiating. Can a non-action, an omission, be an initiating? Lester says that there are active and passive impositions. So if, as I think is the case, he is using "imposition" here in the stronger sense, he seems to be saying that an omission may be an initiation. Indeed, in his discussion of a person who imposes costs on others because he is a typhoid carrier he seems to accept that even passive states of living can be initiations (2012, 65-66). Although Lester does not tell us what an initiating is, he does say that preventing, remedying and defending against an initiation is not itself an initiation, and that initiating an unconsented-to cost-bearing contrasts with merely

withholding assistance, which Lester also calls “merely withholding a benefit” (2012, 60).

Lester adds a complication: “The ideas of cost and benefit here obviously relate to the person’s unimposed desires: those not manipulated by initiating force (physical power) or fraud—as these are themselves imposed costs” (2012, 58). This is far from clear. However, Lester claims that the complication is intended to rule out conceptions of “positive liberty” (2012, 58), which may attempt to reduce costs by manipulating people’s wants. So, it seems that what Lester means is that subjective losses or gains that depend upon manipulated wants are not (real) costs and benefits: to uncover the (real) costs and benefits, the effects of any manipulated wants have to be stripped away. The unargued claim that manipulated wants are themselves imposed costs seems false. For example, someone who wants his wants to be manipulated by initiating physical power, or is indifferent to it, does not suffer a cost by such manipulation, given Lester’s subjective account of cost. However, nothing seems to hang on the unargued claim, so I ignore it in what follows.

It will help to clarify what Lester is saying if we try to formulate it systematically. Since a situation of no imposed costs is a limiting case (arguably unachievable) of minimisation of imposed costs, we could say that liberty, on Lester’s conception, means minimum imposed costs. However, Lester says that liberty has degrees and that an individual gains liberty as the costs imposed on him are reduced (2012, 59), so perhaps the most apt formula, which applies at both the individual and the social level, is:

(L) liberty increases as imposed costs decrease.

Since a cost is a foregone benefit, and a benefit for a person is having something that he wants, so long as the want is not manipulated, we have:

- (C) for any persons, x and y , y brings it about that x bears a cost at time t if and only if
- (i) the position x would have been in at time t , but for some feature of y , is wanted more by x than the position x is actually in at time t ,
 - (ii) the want mentioned in (i) is not manipulated by initiating physical power or fraud.

The condition specified in (i) will be the case *either* if, prior to time t , there was something that x had, and at time t x wants that thing but now lacks it because of some feature of y , *or* if, prior to time t , there was something that x lacked but which x wants at time t , and x would have had it at time t

but for some feature of y . The condition specified in (ii) is obscure in that it has not been explained what would constitute manipulating wants by initiating physical power or fraud. I will return to this point later. Thus, y brings it about that x bears a cost if and only if some feature of y either removes a benefit from x or prevents x from having a benefit x would otherwise have had, provided that the relevant wants of x have not been manipulated by initiating physical power or fraud.

Imposing a cost on someone involves more than simply bringing it about that he bears a cost:

- (I) for any persons, x and y , y imposes a cost on x if and only if
- (i) y brings it about that x bears a cost,
 - (ii) x did not consent to bear the cost mentioned in (i),
 - (iii) y initiated the cost-bearing mentioned in (i).

Condition (i) is explained by (C). Condition (ii) is open to rival interpretations, given that legal and political philosophers disagree about what constitutes consent, real consent, tacit consent, informed consent, and fully-voluntary consent; but I will follow Lester in assuming that we know more or less what “consent” means in the situations to be discussed.

The notion of *initiating* in condition (ii) of (C) and in condition (iii) of (I) is undefined, but we can say:

- (*) for any persons, x and y , if a feature of y that makes it the case that x bears a cost without consent is
- a way of y preventing x from initiating an unconsented-to cost-bearing of y , or
 - a way of y defending y against an unconsented-to cost-bearing initiated by x , or
 - a way of y obtaining from x redress for an unconsented-to cost-bearing of y that x initiated,

then that feature of y is not an *initiation* of an unconsented-to cost-bearing by x .

As a definition, or even part of a definition, of “initiation,” this would be viciously circular, because the notion of initiating appears in each of the three bullet points: we need to understand “initiation” before we can understand them. So, this is at best only a partial explanation of the notion.

Finally, imposing a cost on a person is different to merely withholding assistance (or a benefit) from that person. This follows from (C) and (I). For, from (C), withholding assistance from a person will not be a cost to that person if the person does not want the assistance and this want has not been manipulated. From (I), even where withholding assistance does make a person bear a cost, the cost is not imposed if the person consents to bear it or if the cost-bearing was not initiated. But, again from (C) and (I), withholding assistance *is* imposing a cost if the person wants assistance, the want is not manipulated, the person has not consented to having assistance withheld and the withholding is initiated. So talk of “merely” withholding assistance signifies that one or more of these conditions is not met. None of this helps us to understand what Lester means by “initiating.” For that we have to rely on our ordinary understanding of the term or refer to the dictionary (“to begin, set going, or originate”). Propositions (L), (C), (I) and (*) will be referred to repeatedly in what follows.

3. Paradoxes

Lester considers four “fundamental criticisms” of his conception of liberty and offers rebuttals of each. One of these criticisms concerns the objectivity of interpersonal comparisons of subjective cost; another is an objection from Amartya Sen concerning a conflict between liberalism and Pareto-optimality. Lester says enough to rebut both of these and I will say no more about them. However, with regard to the other two criticisms it seems to me that Lester’s rebuttals fail.

3.1 Reducing Population Increases Liberty

People have effects on each other and some of these effects amount to imposed costs. Therefore, there would be fewer imposed costs if there were fewer people; in which case we can increase liberty by preventing births, so that when only one person is left alive imposed costs are eliminated and liberty is maximised. Indeed even genocide may increase liberty, since the costs borne by the murdered may be smaller than the costs they and their descendents would have imposed on others. Consequently, the conception of liberty as absence of imposed cost is consistent neither with the usual accounts of liberty nor with the maximisation of welfare (2012, 62).

Lester regards this as a far-fetched criticism and he offers a threefold, but cavalier, response (2012, 62-63). First, if future costs imposed on potential people are to be counted, then we should count the countervailing, and greater, costs imposed on potential people by preventing them from being born. Second, it is doubtful that costs on potential people should be

counted. Third, a simple logical possibility that makes the conception of liberty implausible does not make that conception implausible for practical purposes. We will consider these three points in reverse order.

Lester's third point does not apply to the genocide objection, since genocide is not a "mere logical possibility." Perhaps it is a "mere logical possibility" that we could decide to prevent all births; but it should not simply be dismissed. For, if maximising liberty entails preventing all new births, but no one is going to consider seriously preventing all new births, then why should anyone consider seriously the aim of maximising liberty?

Lester's second point also seems mistaken. Social and moral theory, social policy, and "the man in the street" typically do take account of costs imposed on potential people when evaluating options. People often evaluate options about where to live, where to seek employment, and how much to save, according to their likely consequences for the welfare of children they have not yet produced. Policy-makers typically take account of, or at least pay lip-service to, the impact of their proposals upon future generations. And a theory which links liberty with human welfare, as Lester's ostensibly does, would surely be defective if it took account only of the welfare of currently existing people rather than of the human race as "a going concern."

Lester's first point may seem irrelevant, because its *antecedent* does not apply to the objection. For the objection does not, or need not, count costs imposed on merely potential people. The claim is simply that preventing births, or genocide, reduces population, thereby reducing imposed costs on currently existing people who remain alive. However, the *consequent* of Lester's first point can stand on its own. Although it is stated to apply to the objection from preventing births, it can be adapted to apply also to the objection from genocide. Thus, it seems plausible that the life of a person is, in general, a greater benefit to her than the costs she imposes on others. However, even if this is true, it does not help Lester. For if a person's life imposes a cost on us, that is, if it initiates a cost-bearing by us to which we have not consented, then killing that person, or preventing her from being born, is preventing her from initiating an unconsented-to cost-bearing. But, by (*), if y prevents x from initiating an unconsented-to cost-bearing of y , and thereby brings it about that x bears a cost without consent, y is not initiating that unconsented-to cost-bearing by x . So, by (I), y is not imposing a cost on x . Thus, taking or preventing the life of a person in order to prevent her from imposing costs on us imposes no costs on her. So, contra Lester, on his own account, it is not the case that the costs imposed on actual or potential people by killing them or preventing them from being born are greater than the costs those people would have imposed on others.

It might be retorted that it would be more charitable to read Lester as drawing the line at killing someone to prevent her from imposing costs on others, even if killing her is the only way to prevent her from imposing such costs. But this seems ad hoc because there appears to be nothing in Lester's account which would explain such a limitation. Maximising liberty means minimising imposed costs: no special provision is made against acts which involve killing.

We might reply to the objection as follows. If we prevent a birth or kill a person, we avoid not only the costs that the person would have imposed on existing people but also the benefits she would have bestowed. But, by (C)(i), to be denied a benefit is to bear a cost. So, by taking or preventing a life we bring it about that the people who remain bear a cost. Since those people have not consented to bear that cost, and since we initiate that cost-bearing, then, by (I), we are imposing a cost on those people. Since specialisation by comparative advantage increases wealth (Alchian and Allen, 1972, 201-8), it seems plausible that, for the vast majority of people, the benefits bestowed by their lives are greater than the costs they impose. Therefore, a policy of preventing births, or of genocide, will involve a net imposition of costs on existing people and thus run counter to liberty. However, this reply depends upon the assumption that an increase in wealth corresponds to a net reduction in imposed costs in Lester's sense. We will see in section 5 that this assumption is false.

3.2 Illiberal Measures Increase Liberty

Lester next considers three examples of types of people who have specific qualities which generate extraordinary imposed costs, with regard to whom minimising imposed costs may appear to require illiberal measures.

Example 1. Mary is a carrier of typhoid, which she gives to others, though she is unaffected by the disease herself. It seems plausible that the cost to Mary of being killed is smaller than the total costs she imposes on other people (including death in some cases) by interacting with them. Therefore, killing Mary will increase liberty (2012, 64-65).

Lester concedes that, if killing Mary is the only available option for avoiding the unconsenting and uncompensatable costs she imposes on others, then killing Mary increases liberty. He points out, however, that in such circumstances, it would be illiberal to let Mary live (2012, 65-66). He also considers options other than killing Mary, such as prohibiting her from areas where she might infect others, or even imprisoning her, neither of which would be illiberal under the circumstances (2012, 65). He does not actually say, but does seem to assume, that liberty favours taking these other

options, if available, in preference to the option of killing Mary, because the costs to Mary would be lower.

However, it seems that in Lester's account of liberty the costs to Mary should not count. Since Mary, by being a typhoid carrier, imposes costs on people with whom she comes into contact, then by (I) and (*), actions taken by those people (or others) to prevent those costs being imposed do not impose costs on Mary, because they are not initiations: they are self-defence, as Lester notes (2012, 65). So, from the point of view of minimising imposed costs, the options of isolating, imprisoning, or killing Mary seem to be equally good, unless these options differ with regard to the costs they impose on other people. If Lester is assuming a principle concerning minimal or proportional use of retaliatory force, his manoeuvre is ad hoc, because such a principle is not a consequence of maximising liberty as he explains it.

Example 2. Salman writes a book which gives great offence to many religious people, who did not want to be in that position, and who therefore bear a cost as a consequence of Salman's action. The offended people want restitution which, for them, means Salman's death. Thus, Salman's continued existence is a cost to each of them and the total of these costs far outstrips the cost to Salman of being killed. Minimising imposed costs therefore requires the illiberal act of killing Salman.

Lester gives a two-part response to this example. First, he says that people have some control over their emotional responses to mere opinions, so they should try to control their anger. This seems to be irrelevant. For we can suppose that the offended people do control their anger but are nevertheless still offended by what they consider to be an insult and they will suffer from a sense of injury or injustice until Salman is extinguished.¹ The second part of Lester's response is rule-consequentialist. A rule which prohibited giving offence, or which enjoined or permitted punishment of voluntary activities which give offence to third parties, would undermine toleration, foment mutual hatred, put an end to free discussion, and stifle the growth of knowledge. It would thereby drastically fail to minimise imposed costs (2012, 66-67).

Lester considers the following objection: it may be true that a universal rule against causing offence would not minimise imposed costs; but that is consistent with the possibility that prohibiting or punishing particular types of offence-giving will minimise imposed costs, and that the Salman case is

¹ For a similar objection, and several others, to Lester's response, see Gordon and Modugno (2003, 106-7, 109).

one of those types. Lester's response to this objection is that there are ways of preventing offence which impose smaller costs than general prohibitions of particular types of offence-giving. One such way is the privatisation of public property, which would mean that, barring accidents, people would not receive the sorts of messages to which they object, because they would only patronise places or media which are not going to offend them—unless they actually want to be offended (2012, 67-68).

Lester notes a further objection: "it must always remain possible that people could be more upset about something that others do *purely* privately than those others would be upset to be prevented from doing it. Without a concrete example, however, this seems a mere logical possibility—at least on a large scale" (2012, 68). That is puzzling since we do appear to have concrete examples. The sort of religious extremists who object to Salman do seem to be greatly upset at the thought of certain types of comments being made or consumed by anyone, whether or not they themselves happen to hear or read those comments. Many of these people seem so upset that they are willing to sacrifice or risk their lives to punish producers or consumers of those types of comment, so it is plausible that they are more upset by such comments being produced or consumed than the producers and consumers would be if they were prevented from doing so. In addition, it is quite possible that there are also a great number of these extremists. It appears, then, that Lester does not answer the objection.

It might seem that there is another response Lester could have made. This would be to deny that Salman imposes any costs on the offended. For, while Salman (*y*) satisfies condition (i) of (C) with regard to the offended (*x*), it may be questioned whether condition (ii) is satisfied. For the wants of the offended which make condition (i) true of them may be manipulated wants. Thus, it may be claimed, the want not to have particular thoughts expressed, and the want that anyone who expresses such thoughts be killed, have been manipulated by a combination of threats and frauds perpetrated by influential or powerful religious leaders. If this is right, then the frustrated wants of the offended are not costs, according to (C), so they are not imposed costs, so they do not count in determining which options minimise imposed costs, and thus they cannot outweigh the cost that would be imposed on Salman by killing him. The problem with this response, however, is that whether wants have been manipulated (and how) will be a contentious question, turning upon what is to count as influencing a want by initiating physical power, and what sorts of persuasion are fraudulent. Depending on how these questions are answered, it could turn out that most of our wants have been manipulated in some way (as we will see in sub-section 4.1 and section 5, below) and

perhaps that it is impossible to get to the supposed bedrock of un-manipulated wants.

Example 3. Monster is an extremely passionate person who suffers immensely when she learns of people engaging in otherwise innocuous activities of which she does not approve. Even if these activities are highly desired by the people who engage in them, the total costs to all those people of forsaking those activities, though very high, is smaller than the cost borne by Monster if the activities are permitted. It would minimise imposed costs if Monster put a stop to people engaging in those activities or if people who did engage in those activities had to compensate her for doing so. Since the compensation they would have to pay would be worth more to those people than the activities themselves, they would then be better off refraining from the activities, other things being equal. But this is illiberal (2012, 69).

Lester's response to this example seems particularly unsatisfactory. First, he asserts, a rule of minimising imposed costs would not give an incentive to become extremely passionate, since all it requires is compensation, which leaves the injured party no better off (2012, 69). However, that there is no incentive to become like Monster does not change that fact that, given Monster's existence, maximising liberty requires illiberal restraints. Second, Lester says, "a society of passionate brutes demanding great compensation or blocking normal activities would undermine the efficient, long term minimizing of imposed costs (or why have we not evolved to be more passionate?)" (2012, 69). This seems blatantly incorrect. The point of the objection is precisely that prohibiting normal activities for the sake of Monster's sensitivities *is* an efficient way of minimising imposed costs and, presumably, will be so for the long term, unless someone can explain why it is not. What might be an attempt by Lester to give such an explanation (2012, 160-61) is not at all clear. Third, he claims (in an endnote) that, if it turns out that there really are people like Monster, we might wish to opt for a different conception of liberty (2012, note 86, 213). But that is just to concede the objection! Finally, Lester adds that Monster is only a logical possibility which can be ignored for purposes of his *practical* compatibility thesis. However, this cavalier treatment of logical possibilities seems to impugn Lester's seriousness in giving a philosophically satisfactory account of liberty. A logically possible counter-example signifies a problem that may imply further logically possible counter-examples, some of which may be actual: it should prompt further investigation and testing of one's thesis rather than being simply dismissed.

In summary, Lester fails to answer the objection that preventing births or orchestrating genocide will increase liberty, given his conception of it. He also fails to rebut the objection that his conception of liberty is consistent

with illiberal measures: he seems to have only an ad hoc response to the typhoid carrier case; he does not answer the objection from freedom-of-expression and his available alternative response in terms of manipulated wants is unprepossessing; and his responses to “utility monster” examples are irrelevant, confused, and ineffective.

4. Property

Lester attempts to show that his conception of liberty as absence of imposed cost entails, “without mention of rights or morals” (2012, 78), a specific set of property rules, namely, the familiar libertarian principles of self-ownership, homesteading, compensation for property violations, and the enforcement of contracts. This might appear to be a curious project, because property is a social relation involving rights and obligations, and so any derivation of property rules must be talking about rights and morals. I think Lester should be interpreted as saying that he does not assume the correctness of any theory of rights or morals; rather, he aims to show that maximising liberty requires a particular system of property rights. It would then follow that, if maximising liberty is good or right, then, *ceteris paribus*, the property rights he has derived will be at least part of the correct theory of rights and morals. In time-honoured fashion, Lester constructs his derivations for the simple case of a “state of nature.” However, despite his avowed eschewal of assumptions about rights and morals, Lester’s arguments seem to be guided by familiar libertarian assumptions about morality and private property, which he is unable to truly set aside.

For example, he argues (2012, 80):

If I give you a glass of water that you have asked for, then I do not impose a cost on you. If I knowingly put any extra substance into the water that you would object to, then I am imposing a cost on you... If the water is impure unbeknown to me, then that would be mere bad luck on your part: I would not have imposed merely by aiding you in your choice to drink (unless, perhaps, there were some significant negligence on my part).

The first two sentences are true based on Lester’s account of imposed costs; but the third is false. For, in giving you the impure water (which you do not want), I am bringing it about that you bear a cost, according to (C), since you want not to be in the position in which I have now placed you, and your want, we can suppose, has not been manipulated. Further, by giving you the drink I have initiated your bearing of the cost, in the ordinary sense of “initiated.” My action was certainly not one of preventing, redressing, or defending myself from an attempt by you to impose a cost on me. Since you have not consented to bear a cost that I initiated, I have imposed the cost on

you, according to (I). So why does Lester say, in his third sentence, that I have not imposed a cost? It seems to be because, under our familiar moral assumptions, I am not to blame for what I did. It might be suggested that perhaps Lester assumes a person initiates a cost only if he does it intentionally: so, given that I did not intend to give you impure water, I did not initiate it. But in many of his discussions Lester makes it clear that he does *not* assume this, including

- the typhoid carrier case mentioned above (in sub-section 3.2) and
- his discussion of unforeseen (and thus unintentional) impositions (2012, 109-10).

Besides, the parenthetical clause of Lester's third sentence seems to exclude that interpretation. For, if my action had been negligent, it would still have been unintentional; but Lester says that significant negligence may have made my action an imposition. Significant negligence, of course, may make an unintentional action blameworthy. So, what Lester states in his third sentence seems to be guided, not by his own theory of imposed costs, but by our ordinary conception of what is morally blameworthy.

Further, throughout *Escape from Leviathan*, it is familiar libertarian assumptions about property rights and morals which seem to more or less license the steps Lester takes. His own theory about minimising imposed costs is retained only in words, since much of what he says in order to arrive at his conclusions is inconsistent with that theory. As a consequence, his derivations seem hopeless. His premises often conflict with his conception of liberty and his inferences are often invalid. In order to avoid repetition, I will show this only for his attempted derivations of self-ownership and homesteading.

4.1 *Self-Ownership*

Lester's derivation of self-ownership from the observance of liberty is set out in the following passage. For ease of reference, I interpolate numerals within square brackets before the sentences discussed below.

We have both been washed ashore on an unowned island of frugal resources. I assume that nothing is yet owned, including ourselves. I then assume that liberty is to be observed...

Now, [1] to withhold a benefit, or good, to which one has given rise—without thereby imposing on others or agreeing to give it to them— makes others no worse off. [2] It cannot therefore impose a cost (except in the insignificant, and reciprocal, sense of using any resources that another person might otherwise have used). And [3]

the benefit, or good, that one first and most directly gives rise to, merely by existing, is one's own body. So [4] to decline to allow that body to be used by others is merely to withhold a benefit. By contrast, [5] to use another's body against his wishes clearly imposes a cost on him. Therefore, [6] the control of one's body (self-ownership) immediately follows if liberty is to be observed. (2012. 76)

This argument is unsound for a number of reasons. Let us label the two marooned islanders 'Alice' and 'Bob,' and let us suppose that, as in sentence [1], Alice gives rise to a good and withholds it from Bob. The good Alice gives rise to is, let us say, a tree-house. Bob, seeing the virtues of the tree-house, quite naturally wants it for himself. However, Alice has not agreed to give the tree-house to Bob. She also, let us suppose, wants the tree-house for herself and has the means (which she will use if necessary) to prevent Bob from evicting her and taking occupation. In short, Alice withholds the tree-house from Bob. If she had not withheld it, Bob would have had his want to be in the tree-house satisfied, that is, the position Bob would have been in is wanted more by Bob than the position he is actually in. According to (C), then, Alice brings it about that Bob bears a cost, by withholding the tree-house from him. Bob did not consent to bear this cost; and Alice initiated this cost-bearing by building the tree-house and withholding it from him. According to (I), then, Alice imposes a cost on Bob. According to Lester's sentence [2], the only cost that Alice imposes on Bob concerns his unsatisfied want to use the natural resources she employed to make the tree-house. But that is not the only cost she imposes on him, because what she initiated without his consent is the cost constituted by his unsatisfied want to take over the tree-house. Sentence [2], then, is false, given Lester's theory of imposed costs. Since Bob is worse off in that he has a new unsatisfied want, sentence [1] is also false.²

Sentence [1] also includes the phrase "without thereby imposing on others." Lester does not say what this means. It could mean "without imposing a cost on others." But he cannot mean that, because he wants to derive as a conclusion in [2] that no cost is imposed, so to include this in [1] would make his argument blatantly circular. Further, such an interpretation, far from saving [1] from falsity, would make it self-contradictory, because, as we have seen, to create and withhold a benefit from someone is to impose a cost on him, if he has not consented to have the benefit withheld and if you

² Gordon and Modugno (2003, 105-6) recognise this problem with Lester's position, though they express the point in terms of benefit and harm.

initiated the creation and withholding. I suggest that what Lester means by “without thereby imposing on others” in [1] is “without using physical force against others,” which is true of Alice in our scenario.

How might Lester respond? He might say that there is a sense in which sentence [1] is true, because Bob's current position is no worse *in purely material terms* than his position before Alice built the tree-house. Bob still (let us suppose) has all the material goods that he had previously. But this is a notion of *being no worse off* that we had better eschew, since it may easily be confused with the notion of not bearing any new costs, from which, we have just seen, it is distinct, and since Lester uses “no worse off” in the latter sense in his homesteading derivation (see sub-section 4.2, below) and elsewhere (for example, 2012, 85).

Lester could try to save [2] by saying that Bob's unsatisfied want of the tree-house does not count as a cost because it is a manipulated want. That would mean that the want was brought about by initiating physical power or fraud. In a sense this is true, since Alice created Bob's want by building the tree-house, which she did by initiating physical power. This manoeuvre would, however, be a desperate recourse, and one which Lester would not want to take (2012, 150). I mention the manoeuvre only to show how slippery is the notion of a manipulated want, and therefore, how amorphous is a theory which incorporates it.

Sentence [3] also seems to be incorrect. There is no ordinary sense in which I give rise to my body, or to the benefit or good which is my body, let alone doing so merely by existing. It seems rather to be the case that my body gives rise to me, since consciousness appears to be an emergent property of certain types of physical organism.

Sentence [4] contains a truth, namely, that to decline to allow my body to be used by others is to withhold a benefit. However, it is “merely” to withhold a benefit only if it falls short of imposing a cost (see the end of section 2); and it does not always do so. Given that Alice and Bob are the only people on the island, Bob may have an acute want to make use of Alice's body. The position Bob would have been in, but for Alice declining to let him use her body, is wanted much more by Bob than the position he actually is in. So, according to (C), Alice brings it about that Bob bears a cost. Let us assume that Bob has not consented to bear this cost. Then, according to (I), Alice imposes this cost on Bob so long as she initiated the cost-bearing. It seems that she did initiate the cost-bearing by withholding from Bob the use of her body since, if she had not done that, his want could have been satisfied. We would avoid this conclusion, given (*), if Alice had refused Bob permission to use her body in response to some feature of Bob that either

imposed a cost on her or threatened to do so. There is, though, nothing in the description of the situation that implies this. The fact that Alice has declined to give Bob permission to use her body suggests that he has at least asked; but asking her need not impose a cost on her, nor need it threaten to impose a cost on her (indeed, she might have wanted him to ask, either to know that she is desired, or to have the pleasure of refusing). Thus, under some ordinary circumstances, declining to allow my body to be used by another is to impose a cost on him.

It should be clear that sentence [5] is mistaken as well, given (*): using someone's body against his wishes does not impose a cost on him if it is done in self-defence or to exact redress for a cost he imposed.

Lester's conclusion, [6], seems plainly false. Alice has imposed a cost on Bob by denying him access to her body. If he uses her body against her wishes, he will not be imposing a cost on her, so long as this is done as redress for the cost she imposes on him. So, liberty, on Lester's account, seems to endorse rape as a way of reducing imposed costs, since it would remove the cost Alice imposed on Bob without imposing a cost on Alice. If Lester can find a reason to say that rape is not a permissible form of redress for the cost Alice imposed on Bob (even though it would satisfy the want she created and thus be full compensation), then Bob will be imposing a cost on Alice by raping her; but it may still be that the cost Bob imposes on Alice by raping her is smaller than the cost Alice imposes on Bob by denying him the use of her body. So again, rape in this case would achieve lower imposed costs, though obviously it would not be so in all cases of rape. Even if it could be shown that overall imposed costs would be reduced if there were a *rule* either permitting or prohibiting rape, the question of *which* of these rules would involve lower imposed costs has not been answered. Rape is, of course, just one example of a violation of self-ownership: the argument can be generalised. Indeed, since we all impose some costs on others by denying them the use of our bodies, it seems that liberty, on Lester's conception, leaves us all exposed to infringements of self-ownership.

Lester's proposed derivation of self-ownership from the observance of liberty does not meet with success. All of its propositions, both premises and conclusion, are false, given his theory that observing liberty means minimising imposed costs, so none of them can be validly derived from that account (assuming the account is self-consistent, which seems to be the case). The fact that these propositions fly in the face of Lester's account of liberty suggests that in working toward his conclusion he has forgotten his own approach and is working with another. We can see this when he explicitly, though briefly, discusses rape, later in the book:

Assume that no valid property claims yet exist, even in one's own person. A man tries to rape a woman. That woman's interests would thereby be objectively sacrificed to the man's interests. If the woman tries to prevent the rape by, say, running away then she is objectively merely protecting herself, the body that she is, and not thereby sacrificing, or imposing on, the would-be rapist in any way. Merely to withhold a benefit one gives rise to—in this case the use of the body that one sustains—is not to *impose* a cost or sacrifice on anyone else. (2012, 166-67)

This passage does not make much sense in light of Lester's theory, but the statements are true if we reinterpret them according to a moral theory in which people are normally entitled to exclude other people from making use of their bodies without consent, that is, if we read

“the woman's interests would be objectively sacrificed to the man's”

as

the woman's right would be violated,

and

“she is merely protecting herself, not imposing on the would-be rapist”

as

she is merely defending her right without violating the rights of the would-be rapist,

and

“merely to withhold a benefit is not to *impose* a cost”

as

refusing the man permission to use her body does not violate his rights.

In our ordinary moral view, the woman's “interests” trump the man's because she has a right to exclude him from using her body; in Lester's conception of liberty, the man's “interests” trump the woman's because she is imposing a cost on him.

4.2 Homesteading

In his attempted derivation of homesteading, Lester argues for a Lockean principle that people are entitled to take possession of unowned resources provided they leave enough and as good for others (2012, note 94, 213). But once again he departs from his own conception of liberty. He uses the following example:

There is only one natural water supply on the island... Suppose, instead of being already available, the water had been produced by the digging of a well. Then whoever created the well could find the use of it without his permission to be a cost to him. He was not thereby causing a cost to anyone else, provided that the other person had other places where he could dig a well at least as easily. (2012, 76-77)

On Lester's account of liberty, the truth of the final sentence depends upon what the other person wants. Creating the well does impose a cost on the other person if that person does not want a well there, perhaps because it spoils the view, perhaps because he now has to walk around it on one of his usual perambulations, or for any number of other possible reasons.

Lester's departure from his own theory is illustrated again in the following passage, in which he contradicts himself (with numbered sentences for ease of reference):

So, [1] to the extent that I exclusively possess an essential natural resource which you would otherwise have found and had the use of, I am imposing a cost on you ([2] you are worse off than you would have been thanks to me alone, and you did not agree to the change); that is, [3] [I am] curtailing your liberty. But [4] when other wells are equally possible (not harder to locate or inconveniently situated, and so on) then even if you lack the wit or the strength to dig your own well, you would be lessening my liberty (imposing a cost on me) if you were, against my wishes, to use the well I have dug. [5] I do not *impose* a cost on you by merely creating the well and denying you access. Therefore [6] I have not lessened your liberty and I can *libertarianly* control, or own, the well. (2012, 77-78)

Sentence [1] appears to be true based on Lester's theory. The reason is given in [2] which adverts to (C) and (I); and here he is using "worse off" to mean that condition (i) of (C) is satisfied. So long as there are no other relevant imposed costs, [3] follows, given (L). Sentence [4] seems false, given (*). Since I have imposed a cost on you, you may be obtaining redress rather than imposing a cost on me by using the well against my wishes. Sentence [5] explicitly contradicts sentences [1], [2], and [3]. To arrive where he wants, namely, [6], Lester has to abandon his account of liberty, which gives him [1] through [3], and introduce a postulate, [5], which is inconsistent with it. The conclusion, [6], follows from [5]; it also, trivially, follows from the full set of premises, [1] through [5], because their conjunction is a contradiction.

It might be wondered whether Lester is using "imposing" in [1] in the weak sense discussed in section 2 above, in which it means making someone bear a cost without his consent but without initiating that cost-bearing. Then, if Lester is using the italicised "impose" in [5] in the usual strong sense (in

which it includes initiating), [1] and [5] would be consistent. But there are two problems with this suggestion. The first is that it would involve saying that when I take exclusive possession of a natural resource and thereby bring it about that you bear an unconsented-to cost I do not initiate that cost-bearing; and this goes against the ordinary meaning of “initiate,” which is the only meaning Lester has given us. The second problem is that [3] is true only if I am imposing a cost on you in the strong sense. Since Lester takes [3] to be entailed by [1], he must be using “imposing” in [1] in the strong sense. And then [1] is inconsistent with [5] whichever sense is given to “impose” in [5].

Once again, Lester jettisons his account of liberty when it provides the opposite of the conclusion he wants to reach, and he adopts instead a different theory to achieve his aim. What lies behind [5] seems to be the moral theory that I have a right to the exclusive control of what I create. In Lester's arguments, the real work of deriving a system of property rights is done by a theory of property rights which is tacitly or subconsciously assumed even though it contradicts his account of liberty.

5. Welfare and Free Markets

We have seen that Lester argues that maximising liberty requires the private property rules that typify free-markets. He further argues, by criticising a variety of left-leaning theorists, that maximising liberty maximises welfare. He understands welfare as want-satisfaction, but only where the wants are “spontaneous,” thus excluding any manipulated wants in the sense of (C) (ii) (2012, 149-51). His argument appeals to the works of free-market economists who have argued persuasively that

in the free market people have more of what they want than in any known alternative. This is because the free market produces better and cheaper products—including those conferring status—while increasing the leisure time to enjoy them. (2012, 151)

In section 4, I showed the unsoundness of Lester's argument that maximising liberty, qua (L), requires the sort of property rules that underlie free markets. As a consequence, Lester is not entitled to invoke the contention that free markets maximise welfare in order to show that liberty, qua (L), maximises welfare. In this section, I show that liberty, qua (L), is inconsistent with free markets. Fortunately, this can be shown quite easily.

An entrepreneur who brings a new product to market creates in many people an unsatisfied want for that product. Since he does not give the product, as a gift, to the people who want it, he imposes a cost on them, either because they have to pay his price, and can thus avoid the cost he imposes on them only by bearing another cost (by giving up something they

want), or because they cannot afford his price, and thus continue to have their want for his product unsatisfied. The entrepreneur will also impose a cost on producers of rival products, since he will reduce demand for their products and thus reduce their income, which they do not want. Given that the entrepreneur has imposed these costs on all these people, it will *reduce* imposed costs if the entrepreneur compensates them all, because the cost he thereby bears is not an imposed cost, being merely redress for a cost he imposed. However, it will normally be the case that he cannot compensate all these people. Even if the entrepreneur's rival producers can be compensated for their losses by selling off the entrepreneur's assets, the entrepreneur will normally be unable to satisfy the want of every person who wants the product he created. This is obviously so if his product is an expensive luxury item, but it is also the case even for an item that is relatively cheap, if enough people want it, or even if relatively few people want enough of it. This inability to compensate fully means that imposed costs will remain. That, in turn, means that it will *minimise* imposed costs if entrepreneurs are prevented from bringing new goods to market. Therefore, on (L), maximising liberty requires draconian regulations which stifle all innovation and secure a stagnant and closed society, which in turn requires a totalitarian state. Thus, in Lester's conception, liberty is inconsistent with free-market anarchy and with maximising welfare, and is also plainly inconsistent with the principal commonsense understanding of interpersonal liberty that is dear to the hearts of liberals and libertarians.

A possible response to this objection would be to argue that the new wants created by the introduction of new products are manipulated wants, so the unsatisfied wants that the entrepreneur creates do not count as costs, in which case they are not imposed costs, and thus they are not part of what needs to be reduced to achieve liberty. There are two problems with this response. *First*, Lester would not accept it, given that he says, "Wants stimulated or evoked by voluntary social interactions are quite spontaneous, or unimposed, in my sense" (2012, 150). *Second*, the response is faulty on its own terms. For if the wants for the new products are manipulated, then, not only do they not count as costs if they are unsatisfied, but they do not count as gains if they are satisfied. But in that case the increased wealth that open markets engender, since it does not satisfy unimposed wants, would not count as increased welfare in Lester's sense of the term. And that cuts the connection between markets and welfare that Lester depends on for his compatibility thesis.

Therefore, Lester's argument that maximising liberty (as he conceives it) is equivalent to maximising welfare fails. Although he points out that the literature of free-market economics makes a powerful case that liberty

promotes welfare, this does not show a connection between liberty as minimum imposed costs and welfare (using any ordinary conception of welfare). Indeed, maximising liberty in Lester's sense is inconsistent with the operation of free markets.

6. Conclusion

Lester offers a defence of "the compatibility thesis," namely, the claim that in practice, and in the long term, there are no systematic clashes among interpersonal liberty, general welfare, and market anarchy. The links between liberty, welfare, and free markets have already been made plausible by the work of free-market economists, and Lester appeals to this work in making his case. What is distinctive in Lester's argument is the conception of liberty as an absence of imposed cost. Unfortunately, analysis shows that this conception, contrary to Lester's claims, is not consistent with:

- any ordinary sense of liberty;
- libertarian ideas of self-ownership and private property;
- increasing welfare;
- free markets.

Indeed, it seems that increasing liberty, in Lester's sense of minimising imposed costs, would not only require illiberal measures, but would even require stagnation enforced by a totalitarian state.

References

- Alchian, Armen and Allen, William. 1972. *University Economics*. Belmont: Wadsworth Publishing Company.
- Barry, Norman. 2001. 'A Review of *Escape from Leviathan: Liberty, Welfare, and Anarchy Reconciled*, J. C. Lester.' *Humane Studies Review* 13 (2).
- Brooks, Thom. 2002. 'J. C. Lester, *Escape From Leviathan: Liberty, Welfare and Anarchy Reconciled*.' *Journal of Applied Philosophy* 19 (1): 77-83.
- Cohen, Andrew. 2002. 'Escape from Leviathan: Liberty, Welfare, and Anarchy Reconciled, J. C. Lester.' *Ideas on Liberty* 52 (3): 58-59.
- Gordon, David and Modugno, Roberta. 2003. 'J. C. Lester. *Escape from Leviathan: Liberty, Welfare, and Anarchy Reconciled*.' *Journal of Libertarian*

Studies 17 (4): 101-9.

Lester, Jan. 2012. *Escape from Leviathan*, paperback edition. Buckingham: University of Buckingham Press.

Machan, Tibor. 2001. 'A Hobbesian Defense of Anarchy.' *Review of Politics* 63 (3): 612-14.

Otteson, James. 2001. 'Escape from Leviathan: Liberty, Welfare, and Anarchy Reconciled, J. C. Lester.' *Independent Review* 6 (1).