

## A Critique of “A Critique of Lester’s Account of Liberty”: A reply to Frederick 2013

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### Abstract

*Frederick 2013 (the critique) offers criticisms of the Escape from Leviathan (EfL) theory of libertarian liberty and also of its compatibility with preference-utilitarian welfare and private-property anarchy. This reply to the critique first explains the underlying philosophical problem with libertarian liberty and EfL’s proposed solution. It then goes through the critique in detail showing that it does not grasp the problem or the solution and offers only misrepresentations and unsound criticisms.*

### 0. Introduction

This essay is a reply to Frederick 2013 (the critique). The critique attempts to offer a rigorous criticism of the theory of libertarian liberty in Lester [2000] 2012 (*EfL*). However, it is immediately noticeable in the “references” that the critique does not give the full title (it omits the subtitle) or the name of the author as they appear on *EfL*, or the exact publisher’s name (it is “The University of Buckingham Press”). All quite trivial, of course, but indicating a lack of precision. The critique references only six “critical reviews” of *EfL*, although there have been at least twelve. And there are replies to all of those reviews, which rebut all criticisms while adding useful elucidations. All of these replies might easily be located online in moments.<sup>1</sup> The critique does not list even one of these replies, and appears to be completely uninformed by them. Moreover, since the original book in 2000, there have been many additional essays by the same author that must now also be said to be part of what the critique calls “Lester’s account of liberty”. These basic oversights do not bode well. And, as is evident on going through the critique, its criticisms invariably aim at inaccurate paraphrases and misinterpretations. Consequently, there is no criticism that cannot be rebutted. The critique is mainly remarkable for managing to sustain at such great length the combination of a fundamental misrepresentation of everything it criticises with supreme confidence that it has totally mastered it. However, the greatest fault is one that is shared by all of the reviews: there is simply no apparent grasp of the philosophical problem with libertarian liberty or how *EfL*’s theory of liberty is supposed to solve it. Therefore, the only way that the critique might be mistaken for any kind of genuine refutation would be by a reader making similar errors or—which is more likely—taking on trust the specious rigour and confident claims of the critique.

*EfL* is neither simple nor orthodox. And because there is so much ground covered, many matters that could fill a substantial article are often dealt with in a paragraph or two (*verbum sapienti satis est*). It is extremely easy to misunderstand it. Therefore, it usefully clarifies the relevant theories and arguments to reply to any misunderstandings. And if there were no reply, then undoubtedly the critique would be more likely to be perceived as a refutation. However, the critique might have been much more concise and relevant if it had only focused on what it takes to be the main problem, rather than misrepresenting *EfL ad nauseam* in a plethora of unnecessary detail.

It should be useful to begin with a brief explanation of the main philosophical problem with libertarian liberty, and then of the offered solution to that problem. This is done partly because there is considerable confusion among libertarians generally about the problem; although there is even more confusion about the suggested solution, where it has been noticed at all. This is analogous with the problem of epistemological ‘supporting justifications’ and the critical-rationalist solution.<sup>2</sup> Moreover, the issues here do not appear to be of any less philosophical, practical, or moral importance.

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<sup>1</sup> For convenience, links to replies to all those reviews can currently be found here: <http://www.la-articles.org.uk/lwa.htm>.

<sup>2</sup> For detailed explanations of critical rationalism see, for instance, Popper, K. R. *Conjectures and Refutations* (London: Routledge & Kegan Paul [1963] 1978) and Miller, D. W. *Critical Rationalism: A Restatement and Defence* (Chicago and La Salle, Ill.: Open Court, 1994).

## The crucial philosophical problem with libertarian liberty

The problem can be explained as follows. Some kinds of property are assumed to be compatible with interpersonal liberty: e.g., self-ownership, initial acquisition by use, acquisition by trade, etc. Other kinds of property are assumed to be incompatible with interpersonal liberty: e.g., slavery by seizure, acquisition by conquest, acquisition by transfers based on welfare claims, etc. How are the different kinds of property being distinguished as libertarian or not libertarian? It cannot be because certain kinds of property are merely defined, whether explicitly or tacitly, as compatible with the mere word ‘liberty’: for words, as such, are of little or no importance. It must be because they are thought to be factually compatible or incompatible with real liberty: for the word ‘liberty’ refers to real phenomena in the world just as much as does the word ‘light’. But libertarians usually have no explicit theory of what such liberty is. So, they must have a tacit theory of liberty. And that tacit theory has to be independent of property (or ownership). Otherwise, we could not explain why one kind of property is compatible with liberty while another kind is not. There would be no real libertarian liberty; there would be only different forms of property. And libertarians would be deluded in thinking that liberty, as such, could be genuinely increased or reduced. They would really be referring to property that promotes rights or utility in some way, or maybe promotes something else entirely. But that does not seem to be correct. So, it looks as though there must be a tacit theory of pre-propertyarian liberty. And if there is such a tacit theory, then it ought to be possible—and should be enlightening—to make this tacit theory explicit.

What must libertarians be referring to by ‘liberty’? What most of them explicitly say they mean does not withstand scrutiny, where they have any explicit theory at all. For instance, Robert Nozick has no explicit theory of liberty in his *Anarchy, State, and Utopia*. And some self-described libertarians take something like Hobbesian freedom of action to be the libertarian sense.<sup>3</sup> But this cannot be right, because that is a zero-sum view that people must compete over rather than one which can be either protected or increased for everyone. Less-confused libertarians rightly opt for something more like the Rothbardian theory of interpersonal liberty: of not being aggressed against by other people. But when they try to make this sense explicit they run into problems. A first thing to note is that very few focus on liberty directly. Instead, they write about being against (initiated) coercion or aggression<sup>4</sup> as the implied opposite of liberty, without explaining exactly how these are theoretically related to liberty.

‘Coercion’ fails completely and obviously, if taken literally. For ‘coercion’ is, in plain English, the use or threat of physical force against people in order to obtain their compliance. And thus (initiated) coercion is neither necessary nor sufficient to make an action infringe liberty as libertarians understand it in practice. For some liberty-flouting acts do not involve (initiated) force or the threat of force against people: for instance, fraud is not coercive, and theft is usually surreptitious rather than coercive. And some (initiated) coercion is used to defend against or rectify such non-coercive acts that flout liberty: for instance, policing and law enforcement. In recent years, however, (initiated) ‘coercion’ has increasingly been dropped as the one, or main, thing that libertarians are against.

What about ‘aggression’? There seems to be no similar inherent problem with saying that libertarians are against aggression.<sup>5</sup> The problem occurs when libertarians try to explain ‘aggression’. For they then typically do so in terms of acts that infringe ‘legitimate property rights’.<sup>6</sup> There appear to be at least four mistakes in one here. First, as it stands, this view is compatible with every system of property: they are all perceived as ‘legitimate’ from within themselves. Second, to some extent it

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<sup>3</sup> For a brief criticism of this view see, “Explaining the First Thing about Libertarianism”, PhilPapers: <https://philpapers.org/rec/LESETF-2>.

<sup>4</sup> See, for instance, any number of essays on LewRockwell.com.

<sup>5</sup> However, there are non-libertarian senses of ‘aggression’ that must be kept distinct from the libertarian sense: such as the word is used in sport or in animal behaviour.

<sup>6</sup> For a reply to an example of this see “Some Critical Comments on Long 2013: ‘Why Libertarians Believe There is Only One Right’”, In Lester, J. C. *Explaining Libertarianism: Some Philosophical Arguments*, Buckingham, England: The University of Buckingham Press. pp. 85-94 (2014).

appears to be circular: to simplify somewhat, ‘aggression’ is infringing ‘legitimate property rights’ and ‘legitimate property rights’ are what is acquired without using ‘aggression’ (and throwing into the mix self-ownership, ‘homesteading’, ‘labour-mingling’, ‘rights’, etc., only expands the circle). Third, there is a conflation of what is positive (factual) with what is normative or conventional (moral or legal): such ‘liberty’ is presented as being inherently moral or legal. Fourth, there is no independent theory of libertarian liberty from which it is possible to deduce what kinds of property are factually libertarian (whether or not they are ‘legitimate’).

### **The solution to the crucial problem<sup>7</sup>**

The fundamental sense of ‘liberty’ that libertarianism implies is too abstract to be explained first and foremost in terms of property—even self-ownership—or morals. That is why problems and paradoxes arise when this is attempted.<sup>8</sup> And standard putative solutions to them are, albeit unwittingly, fudged rather than sound.<sup>9</sup> An abstract theory of libertarian liberty (pre-property and non-normative) is both possible and required.

#### *The abstract theory of interpersonal liberty*

‘Liberty’ in its general sense means ‘absence of constraint’ (a relevant contrast is ‘presence of assistance’). The issue here is interpersonal liberty: the absence of constraints on people by each other (not any natural constraint, whether *intrapersonal* or external). But what is it, most generally, that we want other people not to constrain? That general thing appears to be the satisfaction (i.e., fulfilment or achievement, *not* a psychological sensation) of our wants, or preferences, themselves. However, simply failing to assist someone’s want-satisfaction (not providing a benefit or gain) is not equivalent to initiating a constraint on that want-satisfaction (initiating a cost or loss). Therefore, this abstract liberty can be theorised as ‘the absence of interpersonal initiated constraints on want-satisfaction’. But for brevity we may use ‘no initiated imposed costs’<sup>10</sup> to mean the same thing.<sup>11</sup> This eleutherology<sup>12</sup> is the theory of abstract perfect, or complete, interpersonal liberty-in-itself that libertarianism implicitly presupposes. This is a descriptive *theory* of libertarian liberty that is falsifiable by counterexample or sound criticism (e.g., showing that it is somehow incoherent, or that it cannot explain some aspects of libertarianism, or that another theory of liberty fits libertarianism better). It is not a definition (as the non-philosophical, in particular, may mistakenly view it), whether stipulative, persuasive, or about usage. However, any theory can also be used as a definition.

#### *The individualistic liberty-maximisation theory*

There are three general theoretical problems with applying this account of perfect liberty: clashes, defences, and rectifications. 1) What if our want-satisfactions clash? I want to do something which, unintentionally, would initiate imposed costs on you (e.g., my starting a fire would cause you obnoxious and hard-to-avoid smoke), but to stop me would also initiate imposed costs on me (I want a

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<sup>7</sup> This section has been revised to match the more recent and much clearer expression of the general theory that is in “Eleutheric-Conjectural Libertarianism: a Concise Philosophical Explanation”, *MEST Journal* (forthcoming), and also on PhilPapers here: <https://philpapers.org/rec/INDNLA>.

<sup>8</sup> As found, for instance, in chapters 41 and 42 of Friedman 1989.

<sup>9</sup> As found, for instance, in the Block 2011 response to Friedman 1989. And see the response to Block 2011 that is “A Critical Commentary on Block 2011: ‘David Friedman and Libertarianism: a Critique’ and a Comparison with Lester [2000] 2012’s Responses to Friedman”, in Lester 2014, pp. 106-143.

<sup>10</sup> Thus “initiated imposed costs”, whether used in an abstract or in a libertarian propertarian context, is the philosophical clarification of the very confused mainstream libertarian idea of “aggression”. This also solves the problem of what, in abstract principle, constitutes ‘(inflicted) harm’ from a libertarian viewpoint.

<sup>11</sup> For a long time ‘proactive imposed cost’ has been used instead of the original ‘initiated imposed cost’ (and with ‘initiated’ usually being implicit). However, to some readers ‘proactive’ appears to connote intention, knowledge, or foreseeability of the consequences. As none of these things is meant to be implied, this essay uses ‘initiated’ as being slightly clearer.

<sup>12</sup> A theory of liberty: from ‘eleutheria’, an Ancient Greek term for, and personification of, liberty.

fire for warmth and cooking). The most libertarian option is to minimise overall initiated imposed costs, with situation-specific compromise or compensation. Thus, we see the error in assuming that libertarianism is absolutist: that individual liberty can always be perfect and without any infractions. 2) How far can one go to defend oneself from initiated imposed costs? Not so far as to initiate them oneself by overall exceeding any that are threatened (e.g., putting landmines in one's garden to stop children using it as a shortcut). 3) If an initiated imposed cost occurs, then what would rectify it? Restitution matching the degree of cost,<sup>13</sup> including retributive-restitution and any risk-multiplier proportional to the chance of evading rectification.<sup>14</sup> Therefore, we see that some broad interpersonal comparisons of normal initiated imposed costs are sometimes necessary to solve these problems. But these three solutions are only about the liberty of the people directly affected, although that could be indefinitely many people. They do not amount to collective libertarian consequentialism (with the local-knowledge problem and perverse incentives probably causing self-defeating unintended consequences). This is an individualistic liberty-maximisation theory.

#### *The immediate practical implications of instantiating liberty*

If such liberty were to be observed in a state of nature, then what general things would this entail? Primarily, people want to have initial ultimate control of the bodies that they more or less are. They do not initiate imposed costs on other people by having this, unless trivially and reciprocally by merely existing and being composed of resources now unavailable to other people. Therefore, liberty-maximisation entails that they have this initial ultimate control of their bodies. Next, people want to have initial ultimate control of any unused resources they start using, and thereby closely involve in their want-satisfactions (the resources they use for clothing, tools, habitation, etc.). They do not initiate imposed costs on other people by having this, unless trivially and reciprocally by their chosen use and those resources now being unavailable to other people. Therefore, liberty-maximisation entails that they have this initial ultimate control of their used resources. Otherwise, and consequently, all interpersonal interactions and resource-transfers need to be consensual or they are likely to significantly initiate imposed costs. These three principal, positive, *prima facie*, libertarian rules of liberty-in-practice fit abstract liberty-in-itself almost perfectly. They maximally internalise externalities with respect to want-satisfaction, and are thereby economically efficient (in the sense of maximising general want-satisfaction). To break any of these three positive rules infringes interpersonal liberty *prima facie*. However, problematic cases may require the abstract or maximisation theory.

#### *Private property and legal remedies are additional aspects*

In a hypothetical world of perfect libertarians, those three practical rules and three solutions to application problems might be enough for libertarianism to function. But in order to better protect and promote liberty-in-practice in the real world, these positive rules and solutions can be instituted as enforceable private property<sup>15</sup> and legal remedies. As a result—strictly speaking—self-ownership, such private property, and such legal remedies are not *inherently* liberty-in-itself or even liberty-in-practice (as propertarian theories of libertarianism sometimes appear to assume<sup>16</sup>). Otherwise, we risk conflating liberty and property into an unfalsifiable theory (or even a mere stipulative definition). Nevertheless, once libertarian legal principles have been thus derived, then ‘initiated imposed costs’ can normally be interpreted in terms of breaching them: there is no need to return to the abstract theory and pre-legal implications except for philosophically problematic cases. This is why private-property libertarianism alone has so much intuitive verisimilitude and cogency; and it is, therefore, sometimes mistaken for the necessary and sufficient totality of libertarianism.

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<sup>13</sup> Within reasonable limits to deal with exaggerated claims, the pathologically passionate, and to stop the (self-defeating) evolution of “utility monsters”; on which, see Lester [2000] 2012, pp. 65, 69, 77, 159, 160.

<sup>14</sup> See Lester 2000.

<sup>15</sup> One added sophistication is similarly derivable intellectual property. See Lester [2011] 2016, chs. 30, 32.

<sup>16</sup> Many publications by Walter Block say they are about libertarianism and liberty, but property-rights appear to be placed first and last with libertarianism being held to be a theory of law.

### *Moral explanations are a separate issue*

It is a further completely separate and normative matter whether this overall positive system of liberty-in-practice is moral, just, rights-observing, valuable, etc. Only after deriving the positive account is it possible to ask normative questions about it. As a result—strictly speaking—self-ownership, such private property, and such legal remedies are not *inherently* moral, just, rights-observing, valuable, etc. (as moralised theories of libertarianism sometimes appear to assume<sup>17</sup>). Otherwise, we risk conflating libertarian law and morality into an unfalsifiable theory (or even a mere stipulative definition). Nevertheless, correctly interpreted—philosophically and empirically—deontologism, consequentialism, and contractarianism (the three main moral theories) all point towards libertarian liberty-in-practice as the outcome: the real top of Derek Parfit’s moral mountain.<sup>18</sup> However, libertarianism can simply be morally posited and defended in itself without requiring that it follow from any allegedly more-fundamental moral theory.

Does any of this really matter? Yes, it is absolutely vital. Because without some such theory, libertarianism at its very core is a completely vague and *ad hoc* philosophical mess—however true and important its associated economics and other social sciences might be. Self-described ‘libertarians’ cannot even explain what liberty as such is, or relate it to anything at all. But with this theory it is possible to have sound and precise libertarian philosophical answers and solutions to myriad criticisms and problems. A tacit muddle is resolved into explicit clarity.

### **The social problem with the new solution**

This non-normative, pre-propertarian, liberty-centred, theory is also combined with critical-rationalist epistemology: it is held, in every part and at every stage, as a conjecture for criticism—epistemologically unsupported and unsupportable (whether by self-ownership, rights, utility, eudaemonism, contractarianism, argumentation ethics, etc.) but not unexplained or unexplainable, or undefended or undefendable. And that combination seems more than sufficient to make it a new paradigm: eleutheric-conjectural libertarianism. Consequently, this is something that most of the old guard of libertarians are very unlikely to accept, or even to understand. Most reviews of *EfL* are clearly unwittingly confused by what is really being said about liberty, *inter alia*. Therefore, the ‘supporting justifications’ (although epistemologically quite impossible) of ‘libertarianism’ (although with no proper theory of liberty) are not likely to die out soon. It will likely be mainly a new generation of young Turks that can understand and accept the new paradigm.

With this background outline of the problem and of the offered solution, it is now possible to examine the critique with less chance of not being able to see the wood for the trees. In fact, the above explanation constitutes the substantive reply to the critique. What follows is the equivalent of footnotes dealing with the critique’s sundry confusions in detail.

### **1. Reply to “1. Introduction”**

The critique often quotes misleadingly or paraphrases inaccurately. Thus, it states that “Lester argues for what he calls ‘the compatibility thesis’” (45). The reader is deprived of the relevant information that this is intended to be a version of “the ‘classical-liberal compatibility thesis’, or ‘compatibility thesis’ for short, though ... a more explicit and more extreme version” (*EfL*, 1). The compatibility thesis is then paraphrased as, “in practice, and in the long term, there are no systematic clashes between interpersonal liberty, general welfare, and market anarchy” (45). Here the reader is mainly deprived of a qualification after “practice”: namely, “(rather than in imaginary cases)”. Other examples are more serious. For instance, we are soon told that *EfL* “argues ... that this conception”:

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<sup>17</sup> As we see in *Anarchy, State, and Utopia* (op. cit.).

<sup>18</sup> *On What Matters: Volume One* (Oxford University Press, Oxford, 2011), p. 419: “These people are climbing the same mountain on different sides”.

(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. (45)

This is particularly misleading. It makes the whole thing sound like a persuasive or stipulative *definition*. In fact, relevant *a priori* and empirical connections among the *theories* of rationality, liberty, welfare, and anarchy are explained. And all four theories are independently defended.<sup>19</sup>

The rest of this reply will continue by dealing in detail with the critique’s interpretations and criticisms in the order in which they arise (points of agreement and relatively trivial disagreement will be ignored). It will be argued that none of them presents a problem for a correct understanding of the theory of liberty and the compatibility thesis.

## 2. Reply to “2. Imposed Costs”

The critique quotes out of context that “costs consist of the foregone opportunities of decision-makers” (*EfL*, 60). The full sentence is not making that assertion about the theory of liberty but, rather, is about economics:

Some people, particularly economists, might think that ‘harm’ would be more accurate, and that this step is regrettable because of the difficulty in economics of getting people to see that costs consist of the foregone opportunities of decision-makers.

And this quoted apparent assertion

“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” (*EfL*, 60)

is only one of two given possibilities. The main idea of a ‘cost’ is “a loss of what one wants” (as the critique quotes first), which is, more precisely and hereafter, ‘a preference-utility loss’.

We are then told that, “what it means for a cost to be *imposed* is explained in the following passages” (46). Six different passages are quoted and it is then concluded,

Unfortunately this appears rather sloppy. Does the parenthetical “that is, without their consent” refer back to “initiated and imposed” or only to “imposed”?” (47)

What “appears rather sloppy” is the critique’s interpretation. Even in the passages it quotes, it is clearly stated that we “can now define ‘interpersonal liberty’ as ‘people not having a subjective cost initiated and imposed on them by other people’”. The critique eventually realises what must be meant, but then says,

It is therefore a recipe for confusion when Lester says that “for short” liberty is the absence of imposed cost. (47)

And yet the critique goes on to say,

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. (47)

So, having criticised the abbreviation as “a recipe for confusion” the critique itself adopts “impose” as an abbreviation for “an initiation as well as a lack of consent”. (However, as we saw in the earlier new explanation of the theory, usually adding ‘initiation’—in its various grammatical forms—is now preferred in order to reduce possible confusion.)

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<sup>19</sup> Unfortunately, *EfL* sometimes slips into using ‘definition’ and ‘define’ where it would be clearer to use ‘theory’ and ‘theorise’. So relevant misunderstandings are thereby encouraged.

The critique also objects that “The term ‘initiated’ is not defined” (47). Why would it be necessary to define an ordinary English word when nothing unusual is meant by the word? And what about the potential infinite regress that this seems to imply? Yet having objected, the critique again appears to go to show that it is clear enough what is meant by it in context.

Next it is asserted that,

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. (48)

How this is “a complication” and “far from clear” is a complication and far from clear. But, doubtless, something could be said by way of illustration. For instance, Peter is not *benefitted* by Paul when Peter chooses to take out ‘insurance’ at the point of Paul’s gun or that Paul has no intention of paying out on. And Peter does not suffer an initiated imposed cost if Jack, in Peter’s defence, is able to prevent the chosen transaction either by, say, disarming Paul or stopping the relevant bank transfer (even if he has not explained the fraud to Peter).

It is erroneously asserted 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.

What is actually written about this additional point is that, “This rules out, among other things, conceptions of ‘positive liberty’ that really involve paternalism”. This is clearly an aside, not the main intention. Moreover, the critique’s own introduction of the phrase “manipulating people’s wants” overlooks and obscures the requirement that this must be by the use of initiated coercion or fraud.

The critique continues,

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. (48)

*EfL* specifically says it is referring to “force” (but more precisely, ‘initiated coercion’) and “fraud”, as we have seen was even quoted correctly by the critique. The extremely misleading, and isolated, paraphrase “manipulated wants” is introduced by the critique (and then used repeatedly in that essay).

We are then told that “The unargued claim that manipulated wants are themselves imposed costs seems false”. But, just as the critique has quoted, what was actually being explained was how “The ideas of cost and benefit here obviously relate to the person’s unimposed desires” (and now this has been explained even further with concrete examples). Nowhere in *EfL* is anything written that implies that all “manipulated wants are themselves imposed costs”. This is yet another of the critique’s inaccurate paraphrases. Consequently, the criticism of that inaccurate paraphrase, that

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 (48)

is, in fact, entirely correct but completely in accord with all of *EfL*. Of course want-manipulation of any kind does not count as an initiated imposed cost if people spontaneously want that or are indifferent to it.

Given the critique’s demonstrated liability to misinterpretation of *EfL*, the following words are ominous: “It will help to clarify what Lester is saying if we try to formulate it systematically”. The alleged clarification begins:

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. (48)

No, we could not. As is explained in the introduction here, and as is clear enough in *EfL* and even from quotations used in the critique, liberty *itself* is only the absence of initiated imposed costs. The

libertarian *policy* is the minimisation of any such costs. In very many aspects of their lives people will have perfect liberty. And in certain situations people might occasionally have complete perfect liberty.

Thus the critique is right to go on to say,

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. (48)

Unfortunately, this is then immediately ‘explained’ as

Since a cost is a foregone benefit, ...

No, it isn’t. There is a “non-moral and causal contrast between imposing a cost and, merely, withholding a benefit” (*EfL*, 60). A cost is the opposite of a benefit: a cost is a preference-utility loss; a benefit is a preference-utility gain. And merely to fail to provide a benefit to someone (say, not to give him ten pounds as a gift) is not imposing a cost on him.

The critique goes on to try to express everything in formalised abstract terms:

(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.

And this might appear, at first blush, to be correct. However, more precisely, (ii) ought to read ‘initiating *coercion* or fraud’. And, as we have already seen (and will soon see further), the relevant senses of “cost” and “manipulated” are not understood in the critique. Moreover, what we seem to have here, and following on for several similar examples, is an account redolent of the deliberately tortuous explanations of “one song to the tune of another” as featured on the BBC radio programme *I’m Sorry I haven’t a Clue*. Except that with the critique, unlike in the radio programmes, the unnecessarily complicated explanations often even fail to capture what is required. It would be much clearer to stick to plain English and concrete examples, as was done in the introduction to this reply, to avoid slipping into spuriously rigorous formalisations.

We are told that “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”. It is obscure how this could seem obscure. As was explained, clear examples would be making you want to give me money (given the alternative to not doing so) by threatening you with a gun or by making you want an apparently attractive but actually fraudulent offer. The creation and fulfilment of your want does not benefit you. It is an initiated imposed cost.

Now consider,

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. (49)

In *EfL* costs (preference-utility losses) and benefits (preference-utility gains) are opposites. Thus, this is at best a very confusing way of expressing matters. Also, this fails to capture the crucial *initiated* aspect: what if  $y$  was responding to an earlier initiated imposed cost on  $y$  by  $x$ ? And the final provision is somewhat superfluous, as it is implicit (it might as well say ‘provided that  $x$  and  $y$  are persons’; or any number of other things). As usual, the critique does not demonstrate any understanding of the basic philosophical problem or how the given solution is supposed to solve it. Instead, it merely unsuccessfully attempts to formalise the theory of liberty and then it criticises its own confused formalisations.

This continues when the critique worries at the problem of producing “a definition, or even part of a definition, of ‘initiation’” (49). But when the theory of liberty speaks of the “absence of



initiated imposed costs” it simply means those imposed costs that are ‘started’ or ‘begun’ as opposed to those imposed costs that are ‘defensive’ or ‘rectificatory’. And any “definition” will, in any case, lead to an infinite regress, or an arbitrary stopping point, or circularity. Presumably a *theory* of “initiation” is really what is meant. But no complicated theory of “initiation” itself is required in order to understand what is intended. Consider some more concrete and simple examples: I punch a stranger I am passing; or I smash the eggs that he is carrying; or I run off with his hat. A slightly different explanation might be required depending on whether we are looking at these events from an abstract pre-propertyarian libertarian viewpoint or whether we are assuming that libertarian self-ownership and property have already been derived. However, from both viewpoints, it is fairly clear in what way I am *initiating* an imposed cost in each case.

It is entirely correct to say that “imposing a cost on a person is different to merely withholding assistance (or a benefit) from that person” (the critique, 50). However, utter confusion then follows:

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.

If one did not in any way cause the problem some other person has, and one has no contractual obligation to assist that person, then “withholding assistance” from him is objectively to fail to provide a benefit (a preference-utility raising). It cannot, in itself, be to initiate a cost (a preference-utility lowering). But if the person “does not want the assistance”, then it is not assistance (a benefit) at all to give it (and it may well be an initiated imposed cost). It is a complete muddle over both the theory and the logic of the situation for the critique to assert that “from (C) and (I), withholding assistance *is* imposing a cost if the person wants assistance, ...”.

The critique concludes the section by reiterating that

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”).

Yes, and that is exactly what *EfL* means by “initiating”. Why does the critique suggest a technical definition is required? Why insist on creating its own technical definitions in place of *EfL*’s plain English? Clearly, the critique is attempting to be intellectually rigorous; but it is thereby merely adding complexity to its own underlying misunderstandings. It would have been better to concentrate on understanding the problem and how the theory of liberty relates to it, as well as accurately quoting and criticising the original text.

The reader has been spared the full quotations and analyses of “Propositions (L), (C), (I) and (\*)” (50). But we are told that they “will be referred to repeatedly in what follows”. So, some further replies to them will occasionally be necessary. However, this will not be done by following the critique’s example and trying to “formulate ... systematically” what *its* propositions really appear to be asserting while also requiring and attempting technical definitions of *their* various terms. For it seems better to combat confused, abstract, complexity with plain English and concrete examples.

### 3. Reply to “3. Paradoxes”

#### “3.1 Reducing Population Increases Liberty”

At the end of a paraphrased exposition concerning the possibility of “libertarian genocide” (but not titled as such) the critique says that, “Lester regards this as a far-fetched criticism and he offers a threefold, but cavalier, response” (*EfL*, 62-63). We shall not immediately unpick the critique’s cavalier paraphrasing of *EfL*’s careful responses but go straight to the critique’s cavalier criticisms (which it gives in reverse order).

It begins:

Lester’s third point does not apply to the genocide objection, since genocide is not a “mere logical possibility.” (51)

*EfL* does not say or imply that genocide as such is a mere logical possibility. It argues that the particular variety that is being considered is not logically implied by the given assumptions but, rather, logically precluded by them.

And then,

Perhaps it is a “mere logical possibility” that we could decide to prevent all births; but it should not simply be dismissed. (51)

It is not “simply ... dismissed”. It is shown to be not a logical possibility given the assumptions that were being considered. What the critique calls the “third point” was not a reference to the other two points as being logical possibilities, but an additional hypothetical consideration: “even if there were some mere logical possibility” (*EfL*, 63). Of course, it never helps matters that the critique is criticising its own inaccurate paraphrases rather than quoted text.

The critique continues:

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? (51)

Quite. Which is exactly why more or less that question was asked—although, as usual, not in those exact words—and then it was explained how it doesn’t entail that. So why does the critique ask the question again as though it has not been asked and answered in *EfL*? It must be because of a cavalier reading.

We are then told that “Lester’s second point also seems mistaken”. We can stop right there. The critique’s typically inaccurate paraphrase of what it calls the “second point” is that “it is doubtful that costs on potential people should be counted”. What is actually written in *EfL* is

it is far from clear to me that the formula implies that we should count potential people.<sup>80</sup> That is not how I would interpret it. But then this also applies to the original criticism and so undermines it. (63)

In other words, to spell it out, *EfL* is primarily discussing what the given libertarian formula implies and not whether “potential people should be counted”. But *EfL* also explains that even if we accept that potential people count, then this undermines the original criticism (for if genocide is to be regarded as preventing even larger potential future infractions of liberty, then it also initiates an imposed cost that is far larger still on potential people who will not have lives at all—assuming that most lives are worth living, as discussed in *EfL* endnote 80). Hence it is irrelevant for the critique to argue, against its own inaccurate paraphrase, that people often do consider “the welfare of children they have not yet produced” and “future generations”, etc.

This is the paraphrase that the critique calls the “first point”:

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. (50)

The critique argues,

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. (51)

No, the *EfL* “claim” is not “simply that preventing births, or genocide, reduces population, thereby reducing imposed costs on currently existing people who remain alive”. The central assertion in “a. Libertarian Genocide?” is stated thus: “genocide, if successful, would be a relatively small imposed cost compared to the costs that are bound to occur if the species continues indefinitely ...” (62). If the

critique had only quoted what was written, then it might have had a criticism that aimed clearly at the target.

The critique continues that, “it seems plausible that the life of a person is, in general, a greater benefit to her than the costs she imposes on others”. Agreed. But then we are told “even if this is true, it does not help”. Help with what? The critique is not referring to things actually in *EfL*. The critique purportedly explains:

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. (51)

What does “a person’s life imposes a cost on us” amount to? Is their whole life an initiated imposition (i.e., aggression)? Or some one act or aspect of their life? Because of something they actually do or only what they would do if they were to live, or to carry on living? Which is it? And why not give a concrete example to clarify? It might be true that “killing that person, or preventing her from being born” would prevent some future initiated imposition against us. But, first, how could we know that? And, second, we would thereby be the initiating imposers (or aggressors) if killing—but possibly not if it is some kind of birth-prevention (a concrete example really is needed)—and so liberty would seem to rule it out. The critique’s vague and muddled explanation does not seem to lead to any clear criticism, paradox, or problem.

The critique then attempts to make the matter more explicit with its usual would-be rigour:

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. (51)

As we have seen, all of the critique’s “systematic” analysis is an over-complicated way of expressing its own misunderstandings. And so any argument relying on it is irrelevant to *EfL*. It would be a complicated and repetitive waste of time to unpick every example in detail. However, let us consider the conclusion that “taking or preventing the life of a person in order to prevent her from imposing costs on us imposes no costs on her”. We can ignore all of the critique’s confusions and interpret this as a stand-alone criticism. Other people that we will interact with are almost bound to initiate some imposed costs on us from time to time. Does this mean that we are, therefore, not initiating an imposed cost on them by “taking or preventing the life of [such] a person”? There are several obvious things that can be said by way of a reply. First, ‘getting your retaliation in first’ (as the old football joke has it) is precisely not to retaliate (hence the joke): it is *ipso facto* to initiate an imposed cost. Second, even if one is genuinely reacting to an initiated imposed cost, to do so with grossly disproportionate severity is to go beyond any kind of defence or rectification and (as explained in *EfL*, 108ff, and Lester 2011, Ch. 27) itself to initiate a new, and more severe, imposed cost (e.g., a landowner cannot plausibly claim that he shot dead an inadvertent trespasser in *mere* reactive defence of his property claim). Third, by the same argument, she might take our life as a future imposer on her. So, it is not clear how it is she, rather than we, who is allegedly ‘initiating’ the imposition in this dubious and indeterminate predictive sense. The critique concludes that all this is “contra Lester, on his own account”. But all the accounts are inaccurate paraphrases in the critique and not the real ones in *EfL*. And it is not clear that the critique’s arguments are valid even in their own terms, but that is not worth pursuing in detail here.

The critique then considers the idea of “drawing the line at killing someone to prevent her from imposing costs on others” but asserts “there appears to be nothing in Lester’s account which would explain such a limitation”. Even on the critique’s garbled account this is a perverse and absurd interpretation, but it is worth explaining further for clarity and emphasis. First, to kill someone *before* she is (supposedly) going to initiate an imposed cost on us is necessarily to *initiate* an imposed cost on her, and so this is ruled out. Second, to *kill* someone to deal with a relatively minor initiated imposed cost is to initiate a new and far greater imposition. It is not a proportional defence or rectification in order to minimise initiated impositions (this being the theoretically implied libertarian policy).

The critique considers another possible way to rule out its imagined theoretical implication of killing to prevent initiated impositions: “we avoid not only the costs that the person would have imposed on existing people but also the benefits she would have bestowed”. And the correct response to this is that it isn’t relevant. Other things being equal, the prevention of initiated imposed costs is silent on the issue of benefits thereby also prevented (at least, once libertarian property is derived). That a thief benefits some people when he is not thieving, is not a relevant theoretical reason to tolerate his thieving.

The critique’s own response is that “by (C)(i), to be denied a benefit is to bear a cost” (52). But, as has been explained, this has nothing to do with liberty as theorised in *EfL*. In *EfL* to be denied a pure benefit is never to have a cost initiated. The critique supposes that “by taking or preventing a life we bring it about that the people who remain bear a cost”. On the contrary, to prevent someone from benefitting others is not thereby to initiate a cost on those others (assuming libertarian property). It might result in a loss of benefits to you if I kill your friend. But the initiated imposition is all on your friend (he has exclusive resource-control over his body). You do not own your friend. It would be different with killing a pet dog that you do own.

It has been necessary to go into some detail to demonstrate the nature and severity of the irrelevant confusions in this section of the critique. And each slight variation of a criticism has been replied to, lest it be thought that it is that one that comprises a refutation. From here on, we will sometimes ignore some of the critique’s less important paraphrasing errors and their ensuing erroneous criticisms.

### “3.2 Illiberal Measures Increase Liberty”

Of the typhoid carrier, the critique’s criticism again mistakenly assumes that in *EfL* the costs to a typhoid carrier “should not count. Since ... actions taken by those people (or others) to prevent those costs being imposed do not impose costs ..., because they are not initiations: they are self-defence” (53). This error has been dealt with in principle. To go beyond what is proportionate in defence or rectification is to initiate a new imposition: to become an overall aggressor. The critique asserts that if *EfL* “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” (53). This is simply the critique’s confusion about the theory. The theory is explained to entail that it is possible to initiate additional imposed costs on others even if they started imposing first. And initiated impositions, among the people involved, must be minimised as a matter of libertarian policy.

Of the Salman Rushdie example, the critique first says that it is “irrelevant” to expect people to “try to control their anger” because “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”. It is not “irrelevant” because it is a partial answer and is not intended to be a sufficient answer. And, as was also written in *EfL*, they should also try to control their sense of being “offended”, of course. In a footnote the critique states, “For a similar objection, and several others, to Lester’s response, see Gordon and Modugno (2003, 106-7, 109)”. But for detailed rebuttals to all of the Gordon and Modugno objections see the Lester reply, which the critique appears to know nothing about.<sup>20</sup>

The critique notes the “rule-consequentialist” nature of *EfL*’s main response (which the critique calls the “second part”). Lest there be any confusion, it should be understood that it is rule-consequentialist with respect to maximising liberty, and not utility.

A “further objection” is quoted from *EfL*: “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”. And the critique asserts that this “is puzzling since we do appear to have concrete examples” (54):

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<sup>20</sup> “The Uncogent Auxiliary Hypotheses of Gordon and Modugno: Reply to a Review”, in Lester 2014 pp. 144-154.

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.

There are various points that can be made against this interpretation. 1) The “religious extremists” are simply upsetting themselves by choosing to think about things that they find offensive. Therefore, that aspect is not an initiated imposition. 2) To the extent that the alleged “types of comment” are, *ex hypothesi*, “purely private” how do they even know they exist? 3) Where are there “Many of these people” who are “willing to sacrifice or risk their lives to punish producers or consumers of those types of comment”? There were public displays of supposed anger (if they were even genuinely angry, rather than enjoying self-perceived righteous indignation or doing it as a religious duty). That was not a sign of people “willing to sacrifice or risk their lives”. 4) There might be some people who would be “willing to sacrifice or risk their lives” to attack Rushdie, or a publishing house, etc. But they are relatively few and far between. And so there are not a “great number of these extremists”. 5) The few “extremists” seem more motivated by indulging their fervour than by genuinely protecting themselves from being intolerably offended. 6) There are genuine initiated impositions that producers and consumers of such “comments” must suffer if they are physically attacked or coercively constrained. 7) What about the reciprocal, and escalating, upset at the Muslim behaviour, etc., that such a suppression of private communications would cause? 8) This cannot plausibly be universalised into a rule that would prevent more initiated imposing than it allows. Therefore, it is not at all realistic for the critique to suppose that the coercive suppression of such purely private communications is a lesser initiated imposition than tolerating them. (It is no more realistic than the view that many people are so unavoidably and intensely offended by the mere thought that homosexual behaviour is occurring in private that it is a lesser initiated imposition to suppress such private acts.) Hence, we can ignore the critique’s further discussion of the—in any case, implausible—possibility that such wants “have been manipulated by a combination of threats and frauds perpetrated by influential or powerful religious leaders”.

The critique then, as usual, inaccurately paraphrases the discussion about the possibility of, what *EfL* calls, “Libertarian Utility Monsters”. And it is possible, as usual, to more than reciprocate the critique’s view that the “response to this example seems particularly unsatisfactory”. First, contra the critique, it is clearly relevant to the *possibility* of such monsters that there is no incentive for them to exist, because only if they were to exist might they pose a real *practical* problem for the theory of liberty (the theory of liberty is not supposed to be adequate in all logically possible cases). But even given that they do exist, then it is not true that, as the critique baldly states, “maximising liberty requires illiberal restraints” (55). And this is precisely because of the long-term consequences of giving in to them, as *EfL* explains and the critique even quotes: “a society of passionate brutes demanding great compensation or blocking normal activities would undermine the efficient, long-term minimising of imposed costs (or why have we not evolved to be more passionate?)”. Although the critique fails to add *EfL*’s conclusion that, “So to avoid their multiplication is a sound libertarian reason not to give way to such people to the extent that they exist” (69).

And yet the critique says this “seems blatantly incorrect” because

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. (55)

So, the critique simply fails to realise that the explanation is an explanation. It is possible to elaborate, of course. The consequences of always giving in to the extremely passionate—assuming that they are not faking it—are bound to produce more such people. There would be an ‘arms race’ of cultivated—and possibly eventually evolutionarily-selected—intemperance. The world would have ever more utility monsters. Instead of peaceful cooperation, people would try to impose their preferences on others by developing an uncontrollable frustration at not having whatever they want. It would be a

world where people are increasingly either allowed to impose on others in order to prevent their own uncontrollably great frustration, or allowed to suffer because they are not, yet, sufficiently uncontrollably passionate. There would be more initiated impositions all round in such an intemperate world. Hence, assuming a libertarian policy of minimising long-term initiated impositions, we should not give in to utility monsters.

The critique then states that “What might be an attempt by Lester to give such an explanation (2012, 160-61) is not at all clear” (55). But then very little is clear to the critique, and this is mainly because it does not grasp the basic problem with libertarian liberty or how the suggested theory of liberty is supposed to solve it. In any case, the critique does not even attempt to fault the given explanation or explain what it finds to be unclear.

The critique paraphrastically observes that *EfL* “claims ... 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)” and then absurdly supposes that this “is just to concede the objection!” (55). First, the word “might” (which is in *EfL* as well) is not the word “would”. But the real problem is that the critique has not understood that the purpose of the abstract theory of liberty is to be practically adequate for libertarianism in the real world, not in every logically possible circumstance.

This error is repeated when the critique paraphrases *EfL* as holding that “Monster is only a logical possibility which can be ignored for purposes of his *practical* compatibility thesis” (55). For it states that

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. (55)

The critique simply does not understand what is going on because of its cavalier reading of *EfL*. It does not even understand the problem with liberty that the theory is trying to solve. *EfL* is scrupulous about considering logical possibilities that are *relevant* to the adequacy of the theory of libertarian liberty in the real world and to the classical liberal compatibility thesis. There is no attempt to give a “philosophically satisfactory account of liberty” *simpliciter*, or outside these constraints. Hence a “logically possible counter-example” that is not within the limits of the project will not be one that “signifies a problem that may imply further logically possible counter-examples”. They are irrelevant to “further investigation and testing of one’s thesis” and should be “simply dismissed”—at least, after they have been shown to be irrelevant if they are raised. The critique’s general approach to logical possibility is like that of a schoolboy who has just grasped the idea and cannot stop applying it promiscuously and irrelevantly.

#### 4. Reply to “4. Property”

The critique asserts that “property is a social relation involving rights and obligations, and so any derivation of property rules must be talking about rights and morals” (56). This thereby simply ignores, without offering any direct criticism, *EfL*’s *de facto* account of ‘property’ (but not *de jure*, as there is no law yet) in the sense of the ‘exclusive control of resources’; this being logically entailed by the application of a rule to, real or imagined, circumstances.<sup>21</sup> There is no need for “talking about rights and morals”. Ironically, “this cavalier treatment of logical possibilities seems to impugn [the critique]’s seriousness in giving a philosophically satisfactory account of [libertarian property]” (or it fails to understand logical possibility in this case, at least). The critique states that *EfL* “does not assume the correctness of any theory of rights or morals”. But *EfL* goes much further than that here: it does not even assume their existence. The critique then suggests 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”. This is dragging “rights and morals” back in when the entire point of *EfL* is to

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<sup>21</sup> Although, as explained in the introduction, property (ownership) is now kept strictly separate from ‘exclusive control of resources’ in order to avoid such confusion.

show what the existence of liberty objectively entails irrespective of whether rights and morals even exist.

The critique's confusion continues as it claims that *EfL*'s "arguments seem to be guided by familiar libertarian assumptions about morality and private property, which he is unable to truly set aside" (56). On the contrary, that is exactly the critique's problem. As a putative illustration contra *EfL*, the critique asserts that giving someone impure water by mistake, after they request water, is an initiated imposition: "Since you have not consented to bear a cost that I initiated, I have imposed the cost on you, according to (I)" (56). But to give someone what they request is precisely not to *initiate* an imposed cost. Again, the critique is lost in a sea of words because it does not understand either the problem or the theory. Contra the critique, morals are irrelevant here.

The critique goes on to observe that *EfL* says that (in the critique's paraphrase) "significant negligence may have made my action an imposition" (57). And the critique irrelevantly asserts that "Significant negligence, of course, may make an unintentional action blameworthy" (57). This is another complete misunderstanding by the critique. If my behaviour negligently imposes on you, then that is an objective initiated imposition on you. It is an entirely separate matter whether that objective initiated imposition is morally blameworthy (and, logically, it might or might not be). A useful tool of philosophy is separating matters that are often conflated in a confusing way by common sense. The critique here sticks to a common-sense conflation in the face of a clear philosophical distinction without offering any critical argument. It is simply fatuous of the critique to assert that *EfL* "seems to be guided, not by his own theory of imposed costs, but by our ordinary conception of what is morally blameworthy" (see *EfL*, 109, i. 'Torts' and 'Crimes').

The critique is hubristic despite its—here demonstrated—misunderstanding of every aspect of *EfL* that it criticises. It is not merely ultimately erroneous; it is fundamentally confused. And it is this confusion that causes the critique to conclude that "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" (57). As the critique simply does not understand the theory, or even the problem to which it is the putative solution, it is in no position to determine that the "theory about minimising imposed costs is retained only in words". The critique's conclusion that the "derivations seem hopeless" is true of its own paraphrased versions of the derivations, but these do not relate to any real understanding of *EfL*.

We are then informed that *EfL*'s

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. (57)

As the critique demonstrably does not understand the theory of liberty, this does not seem very likely. But let us see.

#### "4.1 Self-Ownership"

Self-ownership can be more clearly, simply, and precisely derived from observing liberty than is done in *EfL*. There is an example at the beginning of this essay, and there have been others in other articles and books. The critique might profitably have examined some of these were its bibliography for "Lester's Account of Liberty" wider than only *EfL*. That said, the *EfL* version will be defended here.

The critique states that *EfL*'s "derivation of self-ownership from the observance of liberty is set out in the following passage" (57). The critique then quotes one very short paragraph:

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 ...

For some reason the explanatory "(that is, not infringed)" is omitted. The critique then quotes the succeeding paragraph but with its own numbers inserted:

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)

We might now expect a direct criticism of that brief explanation of how *de facto* self-ownership arises from observing liberty. And such a criticism could be useful. But instead of that, the critique mainly discusses its own example concerning the external property of a “tree-house” that “Alice” builds and denies to “Bob”. Exactly how that is supposed to relate to self-ownership is problematic in itself. But it is all the more so because it is also based on a complete misunderstanding. It will be convenient to quote and examine the most relevantly confused parts.

The critique states that “Alice brings it about that Bob bears a cost, by withholding the tree-house from him” (58). However, being kept out of the tree-house is not a, significant, initiated imposed cost, because Bob is not, significantly, worse off because there now exists a tree-house that he cannot use. There is, at most, some minor utility-lowering if Bob cannot now use the same natural resources, or is unavoidably envious or frustrated that he cannot just use the new tree-house. But there would be a significant initiated imposed cost on Alice if, against her wishes, Bob were to use the tree-house that she has invested her thought, time, and labour in creating. Therefore, if liberty is to be maximised, then the minimising of initiated imposed costs entails that Alice must have initial exclusive control of the resource that is the tree-house. And to have initial exclusive control of it is *de facto* to own it. Morals, or rights, or laws, or social conventions are not entailed or presupposed. (But, if one thinks that ownership *must* involve these things, then we can stop at ‘initial exclusive control of the resource’ being entailed: for that is sufficient to solve the central philosophical problem.)

Consequently, the critique is right to observe the possibility that what Alice also “initiated without his consent is the cost constituted by his unsatisfied want to take over the tree-house” (58). But we have now dealt with that in the critique’s example. The problem is that the critique is looking only at Bob’s side of the story. It ignores the fact that if Bob enters the tree-house without Alice’s consent, he will initiate a much greater cost on Alice. And initiated imposed costs need to be minimised if liberty is to be maximised. As ever, the critique discusses the mere words without any apparent understanding of the philosophical problem of how libertarian liberty relates to ‘property’: that some pre-propertarian form of words must be possible if not exactly the ones used in *EfL*. With these additional and more-detailed responses to the critique’s invented example, at least, we can see in what relevant ways the critique is confused to confidently draw as an inference that “Sentence [2], then, is false, given Lester’s theory of imposed costs” and so “sentence [1] is also false”. Admittedly, with the benefit of hindsight, those two sentences could have been elaborated in more nuanced and convincing ways (as, in the introduction, they now have been). But a new theory—as this theory of liberty was, and to a considerable extent still is—is more about groping for the truth rather than clarifying what is already fairly well understood.

The critique then discusses sentence [1]’s phrase “without thereby imposing on others”. It first suggests that this might mean “without imposing a cost on others”. Indeed, that is what it does and can only mean. But the critique rejects this because *EfL* “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” (58). All valid arguments are “circular”: there can be nothing in the conclusions that is not implicit in the premises. The critique is, in effect, complaining that the argument is valid. (And if it is “blatant” rather than “flagrant”, then that might be when it is read aloud.) In any case, says the critique, “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 initiated the creation and withholding” (58-59). But we have dealt with that criticism as it applies to the critique’s example. The critique suggests, instead, that what *EfL* “means by ‘without thereby imposing on others’ in [1] is ‘without using physical force against others’”. However, such a suggestion could only be made by completely failing to understand the philosophical problem, and how the pre-propertarian theory relates to it, and by falling back on the



normal libertarian confusion over liberty and force. As usual, the critique's "arguments seem to be guided by familiar libertarian assumptions about morality and private property, which he is unable to truly set aside" (56).

The critique asks "How might Lester respond?" At first it considers that "Bob's current position is no worse *in purely material terms*". The critique correctly rejects this, but for muddled reasons that are not worth examining. The critique also considers the possibility that "Bob's unsatisfied want of the tree-house does not count as a cost because it is a manipulated want". And the critique correctly rejects this, but again for muddled reasons that are not worth examining.

The critique then states that "Sentence [3] also seems to be incorrect" because

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. (59)

This is to misunderstand a simple point. If we assume that some human being exists, then this thereby entails that he has—because in some sense he *is*—a human body of some kind. So, merely assuming the existence of a human entails (or "gives rise to") that human's body; and that body is usually a good thing from that human's viewpoint. Moreover, we do only continue to exist as long as we maintain ourselves adequately: and so also in that "ordinary sense" our bodies are continuing goods that each of us "gives rise to". (In any case, why would a philosophical text use what is an "ordinary sense" as the sole criterion of truth or validity in a philosophical argument?)

The critique continues,

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. (59)

*EfL* implicitly assumes that humans are biological beings that usually have personhood in the intellectual sense (at least, once sufficiently mature). The critique is drawing attention to the fact that the existence of a person in the intellectual sense is "an emergent property". However, that does not mean that human persons are not biological beings. In any case, it does not fault *EfL*'s explanation of how liberty relates to 'self-ownership'.

The critique then makes the same point about withholding a wanted benefit, but relative to one's body:

Bob may have an acute want to make use of Alice's body. ... So ... Alice brings it about that Bob bears a cost ... that Bob has not consented to bear ... [because] she did initiate the cost-bearing by withholding from Bob the use of her body ... (59)

Strictly speaking, this is correct. And had *EfL* been more elaborate and qualified at that point, then this matter might have been dealt with in the manner explained at the start of this essay and immediately above with respect to the tree-house (as the critique itself might have seen if it had included more of the recent relevant literature on "Lester's account of liberty"). Put simply, it minimises initiated imposed costs for people to have initial exclusive control over their own bodies. Alice might initiate an imposed cost on Bob in the way that the critique explains. But Bob would initiate a far greater imposed cost on Alice if he were to use her body without her consent. The lesser imposition here is far more libertarian. And because of the reciprocal nature of the matter (for example, Alice might suffer an initiated imposed cost because she cannot enslave or kill and eat Bob, etc.) no compensation is plausibly due.

The critique's suggestion is that we "would avoid this conclusion ... 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" (59-60). There are at least three mistakes here. First, the critique overlooks that a clash of initiated imposed costs is possible. Second, the critique overlooks that imposed costs should be minimised when there is such a clash. Third, presumably Alice has *implicitly* "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": that "feature" being just such use of her body, or threat thereof. The critique states that there is "nothing in the description of the situation that implies this" rejection. But it is

unrealistic to think that a rejection needs to be explicit. In any case, this is all an irrelevant confusion. The main criticism has been fully answered.

The critique then criticises “sentence [5]”, which is *EfL*’s assertion that “to use another’s body against his wishes clearly imposes a cost on him”. For, says the critique, “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” (60). If we wanted to interpret the critique with equal literalness, then we might reply that this is clearly wrong because it necessarily does impose—but it does not *initiate* the imposition. However, the critique clearly intends to refer to initiated impositions (as does *EfL*). And so it is more or less right: it does not initiate an imposed cost (unless, as we have seen, it is excessive). How both self-defence and redress fit in with the theory of liberty are explained later in *EfL*. Given the context of *EfL*’s assertion, it ought to be clear that we are assuming a neutral starting point where nothing is owned and human interactions have yet to start. So, the critique is mistaken to suggest that *EfL* has merely overlooked such a possibility.

The critique concludes that “[6], seems plainly false” (60). *EfL*’s “[6]” is that “the control of one’s body ([*de facto*] self-ownership) immediately follows if liberty is to be observed”. However, the critique’s conclusion is on the basis of the criticisms that have already been fully rebutted here.

Not understanding the depth of the hole the critique is in, digging continues in earnest. For it is now asserted that, “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” (60). But this, yet again, ignores clashes of initiated imposed costs, and that initiated imposed costs need to be minimised, and that excessive reactions can themselves initiate imposed costs.

However, the critique then argues that

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. (60)

This is the critique’s usual resort to mere logical possibility. For it is completely unrealistic to suppose that a normal woman would be less imposed on by a rape than a normal man would be imposed on by being denied sexual intercourse with her. For one thing, the man does not even need to look at or think about the woman. To the extent that he chooses to do so, it seems that any relatively slight frustration is self-inflicted. By contrast, a woman that is being raped can hardly ignore the awfulness of it or, even if she were unconscious at the time, stop strongly resenting that it happened. Some very abnormal people exist, of course, but the point is to come up with practical interpretations that can be universalised as libertarian rules. The critique’s criticism is analogous with a statist who points out that the view of property that libertarians defend is logically compatible with destitution, starvation, etc. Yes, it is. But that logical possibility is not realistic as a criticism of libertarian property as such; or so a libertarian would usually argue. (A statist version of the critique might still reply that “This cavalier treatment of logical possibilities seems to impugn [libertarians’] seriousness in giving a philosophically satisfactory account of [property]”. And, again, the correct response to this is that any realistic and relevant criticisms need to be answered, but otherwise we should not get carried away with mere logical possibilities.)

The critique remains resolutely unrealistic with respect to rape. For it then says that,

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. (60)

It was not answered at that point in *EfL*, because it was not being asked. As the critique has raised the question, it has now been answered. Is the critique seriously unsure which rule would “involve lower [initiated] imposed costs”? Being raped is generally a terrible thing for almost anyone. Not being able to rape at will is mainly a self-inflicted and relatively small frustration for a tiny minority of uncivilised men. Another response might be to adapt John Rawls’s Original Position: assuming egoism and that you have amnesia about who you are and what your tastes are, which rule would you choose in order to minimise your chances of suffering initiated imposed costs? Clearly, it is the prohibition of rape. However, the point here is so strong that there is no need to resort to the Original

Position: given who you actually are, which rule would you choose in order to minimise your chances of suffering initiated imposed costs? Only a tiny minority of psychopathic men might opt for permitting rape. Consequently, the critique's question appears to be of doubtful seriousness, but the right answer does not appear to be in serious doubt.

The critique goes on to suggest that,

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. (60)

And the reply to the critique's argument can be generalised as well. The critique has only logical possibility on its side. Realistically, since we would all find it less of an overall initiated imposed cost to observe *de facto* self-ownership (exclusive control of one's body), it seems that this theory leaves none of us "exposed to infringements of self-ownership". The critique does not understand the philosophical problem with how libertarian liberty relates to all ownership, including self-ownership, and so how a pre-property theory is necessary to solve that. Hence, the critique is reduced to floundering around in a context-free confusion in which its examination of mere words and logical possibilities is bound to be hopelessly irrelevant.

The critique has not yet stopped digging. Having raised the issue of rape, it quotes a later passage in *EfL* on the subject:

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 very brief passage is, of course, hardly intended to be an exhaustive examination of the matter. The critique states that this "passage does not make much sense in light of Lester's theory". As has been shown, the critique has offered no sound criticism to that effect. The critique goes on to assert that,

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 (61)

A first thing to notice here is that if a "moral theory" can make the statements "true", then this seems to imply that moral theories can be true and that we have the true one. It is very odd to have those controversial philosophical implications as presuppositions that require no further explanation or defence. But even if the critique is right, it is irrelevant to criticising the passage.

The critique goes on to irrelevantly "reinterpret" three statements: "the woman's interests would be objectively sacrificed to the man's" becomes "*the woman's right would be violated*"; "she is merely protecting herself, not imposing on the would-be rapist" becomes "*she is merely defending her right without violating the rights of the would-be rapist*"; "merely to withhold a benefit is not to impose a cost" becomes "*refusing the man permission to use her body does not violate his rights*" (61). However, this way to "reinterpret" the statements simply ignores the objective theory of liberty and the problem that it is trying to solve and, instead, reinserts the same problematic libertarian moral position without any explanation of how it relates to a theory of liberty. This is analogous with having an explanation of the falsificationist epistemology that a critic chooses to "reinterpret" into an account of how induction is supposed to work. The confusion and irony could hardly be more acute.

Therefore, it is true, but completely misses the point, that "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". And it is false, and completely misses the point, that in *EfL*'s "conception of liberty, the man's 'interests' trump the woman's because she is imposing a cost on him" (61).

#### "4.2 Homesteading"

*EfL* discusses “initial acquisition” (124-127), preferring it as a clearer expression than “homesteading” (73). As usual, the critique reverts to the old way of writing and understanding libertarian matters and uses “homesteading”. The critique first states that *EfL* “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)”. No, it is not true that *EfL* “argues for a Lockean principle”; rather it explains how the non-moral content of that principle is compatible with the theory of liberty. And *EfL* certainly does not mention what people are “entitled” to. Having a non-normative theory of interpersonal liberty that does not mention morals, or rights, etc., is the whole point.

The critique then asserts that *EfL* “once again ... departs from [its] own conception of liberty”. And it quotes this as an 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)

The critique objects that on *EfL*'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. (62)

There are, indeed, an indefinitely large number of either trivial or unlikely possibilities, any of which might be mentioned here—but *all* of which could not possibly be mentioned. *EfL* is simplifying matters in order to get at the general way in which initial acquisition is entailed by minimising initiated imposed costs. And it might have been clearer to have explicitly recognised and stated that this is what was being done. In any case, simplifying matters seems to be a valid procedure, and one that is also followed when theorising in many of the sciences and social sciences. But the critique is also forgetting, or unaware of, the necessity of minimising clashes of initiated imposed costs. Consider the two clashing options: 1) banning one person's much-needed well, and 2) having the other person put up with resenting the well “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”. As long as those “other possible reasons” are, in fact, just as relatively trivial, then clearly 2 is to be entailed as the lesser of the two initiated impositions. Therefore, there is no inherent problem for the derivation of initial acquisition here. There is no “departure from [*EfL*'s] own theory”.

The critique alleges another “departure” is to be found “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)

The critique says that “[4] seems false, given (\*)”. And the explanation that is then given is that:

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. (62)

What cost has been initiatedly imposed? The critique does not clearly say. It has mentioned “(\*)” but we have seen that those various formal interpretations of the parts of the theory of liberty are hopelessly confused, and so that does not help much. Does it mean the possible monopoly cost in [1]? But [4] assumes that [1] is *not* the case: i.e., the “But” at the start of [4]. So that cannot be correct. Does it mean the trivial frustration at not being able to use exactly the same natural resources when there is no shortage of such resources? Or does it mean the frustration at not having access to the new well? But the minimisation of clashing initiated imposed costs deals with both of those. In any case, as we have also seen, “redress” needs to be proportional if it is not itself to initiate imposed costs. And the permanent use of another person’s created economic good does not look proportional to a very slight utility loss. As ever, the critique is trying to be argumentatively rigorous. But such rigour is completely impossible when there is no proper understanding of the philosophical problem or of the putative solution.

The critique continues in its delusions of rigour when it asserts that “Sentence [5] explicitly contradicts sentences [1], [2], and [3]” (62). But sentences [1], [2], and [3] relate to a completely different situation in which “I exclusively possess an essential natural resource which you would otherwise have found and had the use of”. Sentence [5] relates to assumption [4], “*But* when other wells are equally possible (not harder to locate or inconveniently situated, and so on)”. These are two different situations that the critique is mistaking for one. So, it is not true that *EfL* “has to abandon his account of liberty, which gives him [1] through [3], and introduce a postulate, [5], which is inconsistent with it” (62). Sentence [5] is not a “postulate” but follows from [4], given the implicit simplifying assumptions that have been discussed here. And the critique itself admits that “The conclusion, [6], follows from [5]” (62). It adds the logical point that “it also, trivially, follows from the full set of premises, [1] through [5], because their conjunction is a contradiction” (62). For a contradiction entails anything and everything. But it is only the critique that is assuming that the two different and inconsistent situations are intended to be one and the same.

The critique concludes that

Lester jettisons his account of liberty when it provides the opposite of the conclusion he wants to reach ... What lies behind [5] seems to be the moral theory that I have a right to the exclusive control of what I create. ... 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. (63)

As we have seen, only the critique’s confusion could allow it to reach this conclusion. As it does not grasp what is going on, it falls back on accusing *EfL* of “tacitly or subconsciously” assuming the orthodoxy that it prefers. But that orthodoxy is the problem: tendentiously moralised property rights that have no explicit theoretical connection to a non-normative account of liberty.

## 5. Reply to “5. Welfare and Free Markets”

The critique asserts that it will now “show that liberty, qua (L), is inconsistent with free markets”. The critique begins:

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. (63-64)

Realistically, it is hard to see how producing a new product thereby initiates an imposed cost on (i.e., starts an overall utility-lowering of) most of the people who want it. It seems more plausible that most people experience a modest benefit (a slight rise in utility) merely at discovering the opportunity of a new valued product. If they were genuinely made worse off by knowing about its mere existence, then they ought to prefer that the product—which, *ex hypothesi*, they want—does not, or did not ever, exist or that they did not know about it. But few people in reality feel this way. Most people don’t usually even feel this way about desired products that they think they will never be able to afford: luxury

goods well beyond their means. Moreover, as ever, the critique is also overlooking the minimising of clashes in initiated imposed costs. For even when there is some lowering of utility here, the libertarian policy of minimising initiated imposed costs entails that such things must be allowed: or we should all suffer the much more severe initiated imposed costs of never having valuable new products made available and of never making a living by providing them. An odd phenomenon here, is that the critique's argument appears to have something of the flavour of the socialist criticism of "false needs": the fulfilment of which supposedly does not really make the consumer any better off. But one can undermine such a criticism on its own welfare grounds without needing to resort to a much more complicated, controversial, and weaker argument based on "a theory of property rights".

The critique continues:

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. (64)

As explained in the introduction, there are two main ways of applying the theory of liberty. 1) One is to derive self-ownership and (initiated-imposition-minimising) private property generally, and then to use these as *prima facie* libertarian rules, which give us the sorts of property that libertarians accept (with initiated imposed costs now being the flouting of such rules). Such property rules approximate closely to what the abstract theory implies rather as classical mechanics approximates closely to general relativity theory for most human-scale purposes. But when clear problem cases arise, then we have to resort to the more-precise abstract theory. 2) The other way of applying the theory of liberty is to assume away any ownership and apply the pure theory directly to whatever the situation is. This is a form of act libertarianism (but non-moral) that is analogous with act utilitarianism. Correctly calculated, the results should not differ much or often from rule-libertarian property. But that is a fiendishly complicated and unnecessary way to proceed (it is like abandoning classical mechanics and using only general relativity theory).

Now we can apply that two-part explanation. 1) If we take the first approach to rival producers, then the answer is that there is no infraction of liberty because no producer owns his customers' continuing custom. Within the derived framework of self-ownership and private property, continuing custom is a benefit. And to lose a benefit is not to suffer an initiated imposed cost. 2) If we take the second, pure pre-propertarian, approach to rival producers, then we are an initiated imposed cost to any rival—and *vice versa* (as the critique, as always, overlooks or does not understand). And to deny the potential consumers the possibility of choosing the new product would be to initiate an imposition on them. But so would not allowing them to seize the product without payment. And so would allowing the producer to have his product seized without payment. Etc., etc. For in the completely abstract pre-propertarian situation we have indefinitely many potential clashes of initiated imposed costs. So, what is the best way to minimise them, and thus maximise liberty? It is simply to observe self-ownership, appropriate private property, contracts, etc., as libertarian rules—unless and until a clear problem arises as regards minimising initiated imposed costs. And there is no such problem with allowing rival producers to compete in the market place. Rather, that is the solution to the general problem.

It might be objected that a pre-propertarian libertarian cannot consistently use the, *ex hypothesi*, imperfect rules of self-ownership and (initiated-imposition-minimising) private property. But the abstract theory does explain why those rules are very good approximations to what applying liberty entails. And the propertarian theorist has no explicit and adequate theory of liberty at all. So that objection would be somewhat like saying that a general relativity theorist is inconsistent to ever use classical mechanics in his calculations. For, similarly, the relativity theorist can explain how classical mechanics is false but often a good approximation to relativity. But the classical mechanics theorist has no explicit theory to deal with the wider problems that relativity tackles.

The critique goes on to suggest that "it will *reduce* imposed costs if the entrepreneur compensates" the people he has imposed on. But "it will normally be the case that he cannot compensate all these people". And 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" which is "inconsistent with free-market anarchy

and with maximising welfare, and is also plainly inconsistent with the principal commonsense understanding of interpersonal liberty” (64). As we have seen, all this is based on a complete misunderstanding of the theory, and shows no grasp even of the problem that the theory sets out to solve.

The critique then discusses and rejects the idea that “manipulated wants” can help here. But no help is needed and “manipulated wants” are irrelevant. And so there is no need to analyse the critique’s discussion.

In concluding this section, the critique asserts that “Lester’s argument that maximising liberty (as he conceives it) is equivalent to maximising welfare fails” (64). It is not completely clear what “equivalent” means here. *EfL* does not hold that there is an *a priori* equivalence. Rather, there is a very high level of both theoretical and empirical congruence as regards their systematic and practical observance. And nothing that the critique has argued refutes this.

The critique appears to accept *EfL*’s paraphrased view that “the literature of free-market economics makes a powerful case that liberty promotes welfare” (64-65). However, the critique’s expression “makes a powerful case” needs to be read as “provides explanations that withstand severe criticism” rather than as any kind of epistemological support. And how can the critique agree with the point about liberty when it has rejected the given theory of liberty while providing no theory of its own? Moreover, the critique also then writes of “welfare (using any ordinary conception of welfare)”. This appears to imply a rejection of *EfL*’s theory of welfare merely by citing virtually any “conception” that accords with common sense.

## 6. Reply to “6. Conclusion”

The critique concludes by asserting that “analysis shows” that *EfL*’s “conception of liberty as an absence of imposed cost ... is not consistent with: any ordinary sense of liberty; libertarian ideas of self-ownership and private property; increasing welfare; free markets” (65). Fortunately, analysis of the critique’s faulty analysis shows precisely the opposite.

The critique goes on to assert that “increasing liberty, in Lester’s sense ... would not only require illiberal measures, but would even require stagnation enforced by a totalitarian state” (65). As we have seen, this is not a sound interpretation of the theory. But a glaring question arises from that assertion: what is the critique’s alternative, non-normative, theory of what is liberal or “illiberal” that solves the problem of how liberty relates to property? There is no answer whatsoever in the critique, or even an appreciation of the problem.

The pre-propertyarian and non-normative theory of libertarian liberty defended in this essay is clearly far more philosophically complicated than the orthodox propertyarian theory. And if propertyarian libertarians can understand the theory at all, or even what the problem is, then they might not like the interpersonally compared subjective elements or the looser connection with absolute private property (with the apparent danger of a ‘slippery slope’ to modern liberalism, or even worse horrors). That simply cannot be helped. As Einstein is paraphrased to have said (apparently expressing a warning about abusing Ockham’s razor): “Everything should be made as simple as possible, but not simpler”.

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