

A Reply to the Norman Barry review of *Escape from Leviathan*

J. C. Lester (July, 2001; revised January 2022)

As someone who wishes *Escape from Leviathan* (*EfL*) to succeed, I am grateful for a review with such high praise from a well-known classical liberal.¹ As a critical rationalist who also wishes to learn from his mistakes, I am also grateful for Norman Barry's criticisms. The only way that I can hope to try to repay these and appreciate their full force is by doing my best to reply to them. I will leave aside some quibbles about Barry's exact exposition of *EfL*. However, "rarely has capitalism been justified with such philosophical expertise" overlooks, somewhat crucially, that it is *defended* (rather than "justified") and *private-property anarchy* (rather than "capitalism"). But on the general point that the exposition is "not always crystal clear", I am obliged to agree. I can only plead that the book covers considerable ground, much of which is difficult, and often wrestles with applying a new theory for the first time.² Otherwise, the main criticisms will be quoted (smaller indented font) with replies following.

Perhaps Lester pushes the analogy with Popperian science a little far when he says that libertarianism is 'as unsupported as universal scientific theories.' [2] After all, scientific theories, unlike those of ethics and politics, display a greater vulnerability to falsification, and there is considerable agreement among scientists as to what counts as a refutation of a theory.

That theories in ethics and politics are harder to falsify (or, at least, with "considerable agreement") hardly entails that they have worse, or better, 'support' than scientific theories. If critical rationalism is true, then universal theories in all fields must remain completely unsupported conjectures. As a matter of logic, having "greater vulnerability to falsification" but still passing tests in no way supports theories. However, it is logically coherent to say that theories that survive criticisms and tests may be *critically preferred* over theories that do not appear to survive (or which have yet to be tested; especially if those theories involve potentially dangerous practical matters).

Furthermore, there is a strong *a priori* element in Lester's thinking that does not gel easily with Popper's scientific empiricism (though that philosopher is clearly no ordinary empiricist). Certainly, the apodictic reasoning of Mises, who constructed the whole of economic theory from *a priori* premises, would not be acceptable since, in Popper's view, a proposition that could not be falsified had zero empirical content.

It is important to distinguish Popper's scientific epistemology from his general epistemology. Originally, Karl Popper evolved empirical falsificationism as a way of distinguishing (empirical) science from non-science (although all apparent falsifications are themselves, perforce, theory-laden conjectures always subject to testing; something which many critics have failed to understand fully). But Popper's overall epistemology of critical rationalism is much broader than its scientific origins; particularly as influenced by Imre Lakatos (who showed that mathematics is falsifiable by criticism) and William Bartley (who showed that everything else is too, crucially including critical rationalism itself). From the outset, Popper readily acknowledged that there would be empirically unfalsifiable aspects even of empirical science: he certainly did not object to the use of mathematics and logic in science, for instance. There is no reason that he would be bound to object to empirically unfalsifiable aspects within any scientific theory: the overall theory would still be empirically falsifiable. What is particularly relevant here, though, is that Popper explicitly advocates something extremely like Ludwig von Mises's view of rationality as a way of making social-science theories more falsifiable overall.³ For unless we suppose that people are *attempting* to act in the best way that they subjectively can make sense of, some of their behaviour might otherwise be interpreted as merely 'irrational'; and thereby

¹ Barry, Norman. "Libertarianism by Conjecture and Refutation", *Humane Studies Review*, volume 13, number 2, Spring 2001. Available on Amazon.com here:

[amazon.com/gp/customer-reviews/R367KG0XD1FGPO/ref=cm_cr_ar_p_d_rvw_ttl?ie=UTF8&ASIN=0333777565](https://www.amazon.com/gp/customer-reviews/R367KG0XD1FGPO/ref=cm_cr_ar_p_d_rvw_ttl?ie=UTF8&ASIN=0333777565)

² For a much clearer short account see Lester, J. C. 2022. [Euleutheric-Conjectural Libertarianism: a Concise Philosophical Explanation](https://philpapers.org/rec/INDNLA), PhilPapers: <https://philpapers.org/rec/INDNLA>.

³ E.g., "The Rationality Principle", 357ff of *A Pocket Popper*, David Miller, ed., Fontana Press, 1983.

beyond what is intelligible and so criticisable. For instance, John Watkins used Popper's rationality assumption in a paper explaining the behaviour of a ship's captain who had crashed his ship during a manoeuvre in a *prima facie* 'crazy' way.⁴ It is confusing and ultimately impossible to eject all the *a priori* aspects of a theory, as some economists have attempted with rationality. To assert them clearly can be to make them more criticisable, rather than to attempt to put them beyond criticism. Mises was hardly a critical rationalist in his approach to this, of course, and he took the *a priori* aspect too far in the opposite direction by assuming that it was, as Barry says, "apodictic" (established beyond dispute).⁵

Lester slightly relaxes this rigor when he admits into the theory what he thinks is the necessity of cardinal utility (knowing how much a person is better off from a course of action). While he concedes that such notions are not strictly measurable, he claims that 'without the notion of cardinal utility we are left without the notion of conscious beings.' [3]

I see why my unorthodox position will make many libertarians and economists chary. But I do not claim that the cardinality of utility is needed, or even possible, for science. The issue is a philosophical one. So how is this due to lack of *philosophical* rigour? I explain why I think it is necessary to allow that *approximate* cardinal utility sometimes makes sense (primarily, to relate the theory of abstract interpersonal liberty to its practical implementation). Barry does not say why it does not make sense, and so I have nothing to add. That the concept might be abused cannot be an objection to its making sense (and see below on interpersonal comparisons of utility, which is more precisely where the risk is usually thought to be located). I do find it hard to understand how any conscious being could have a hierarchy (ordinality) of real desires but these desires had no felt intensity (approximate cardinality). In any case, it does seem to be true of humans that we are like this. We know roughly how much—how intensely—we want particular things, and that is why we can usually easily rank our preferences.

Those of a deep religious persuasion undoubtedly feel a loss of subjective liberty when their faith is traduced, as Muslims undoubtedly did when the author Salman Rushdie parodied their beliefs. This example is used by Lester, but not very satisfactorily. He simply says they had no 'realistic case' without properly analyzing it in the context of his philosophical position. ... The disputatious nature of harm is matched by the irredeemably subjectivist aspect of Lester's criterion of the imposition of cost.

A lot more might be said about the Rushdie case, on which I spend only a few hundred words. I was not interested in getting to the bottom of that in the depth that a periodical article might but, rather, using the example to explicate how 'minimising imposed costs' plausibly applies to 'taking offence' in general. But not only do I *not* say that Muslims have no "realistic case" (Barry's words, despite his use of quotation marks), I say "I do not need to deny that having others criticize their religion *is* an imposed cost to the Muslims to some degree" (p. 67). And I deal with various analogies and possible criticisms and counter-criticisms explicitly "in the context of [my] philosophical position" (which I shall not rehearse here). So, I am at a loss to know what to add. Barry seems, again, to be conflating a criticism of my theory of liberty as such with a criticism concerning its possible misapplications. I argue just earlier in the book that there is an "unavoidable subjective element" to imposing a cost (p. 88). To show that this is "irredeemably subjectivist" in practice Barry needs to show what is wrong with my replies to the posited criticisms or give his own refuting example.

In his discussion of the propertarianism versus libertarianism debate he comes down on the side of liberty. Indeed, the notion of self-ownership derives from the idea of liberty conjectured in a state of nature. However, the fact that liberty must prevail over property might pose some problems for Lester's compatibility thesis. He quotes the familiar example of the property owner buying up land so that he surrounds an otherwise innocent person, completely eliminating his freedom. Is property to be legitimately limited to prevent this happening? Lester merely asserts that liberty takes priority.

⁴ In Borger, Robert and Cioffi, Frank, eds., *Explanation in Behavioural Sciences*, University Press, London, 1970.

⁵ For a critical rationalist approach to *a priori* rationality see Lester, J. C. 2017. [Adversus "Adversus Homo Economicus": Critique of the "Critique of Lester's Account of Instrumental Rationality"](https://philpapers.org/rec/LESAAH-2). PhilPapers: <https://philpapers.org/rec/LESAAH-2>.

Not only self-ownership is, ultimately, derived from applying liberty (via initial ultimate control of one's body); so is private property (via initial ultimate control of what one first uses). But while self-ownership is very closely tied to liberty-in-practice, private-property more easily clashes with it (such as is here imagined). And when that happens the property right is shown to be *prima facie* libertarian rather than absolute. For if libertarianism is really about liberty, then it must be the case that "liberty takes priority" and the paradox is thereby solved (but if property is absolute then the innocent person is imprisoned, unless he can dig his way out or fly out). As for the claim that *EfL* "merely asserts" this, there are a few sentences of explanation as to why overriding normal property here—and allowing an easement—is the lesser initiated imposed cost, and thereby more libertarian. However, this is all in a context is discussing similar issues that should help to make the overall position clearer.

Similar problems, identified by David Friedman, occur with a possible conflict between liberty and an uncontroversial notion of utility. Are we entitled, albeit illegitimately, to seize a gun when that is the only way of controlling a dangerous lunatic? Lester seems to go along with common sense solutions to admittedly unusual cases; they do pose probably insoluble intellectual problems. But they could be converted into more plausible scenarios by anti-libertarians using well-chosen examples.

What *EfL* says of Friedman's examples here is, broadly, that the overriding of libertarian property in the interests of great utility looks preferable in the abstract but that they lack plausible scenarios that make them a practical problem; and the compatibility thesis is about what is practical not what is merely logically conceivable. However, I also suggest that subsequent to any gun-seizing, etc., it is sufficient to "require libertarian rectification for any loss imposed even in any rare, genuine cases" (p. 119). That Barry "merely asserts" that "anti-libertarians" could think of some "more plausible scenarios" (presumably, where there are significant and systemic clashes between liberty and welfare in practice) does not provide anything substantive to answer.

There is a property problem more immediately relevant to public policy It certainly has a bearing on Lester's compatibility of liberty and property thesis, for the case for a land tax (Henry George's single tax) is the only example of an interventionist policy I know that is consistent with efficiency (utility) and a superficially plausible notion of liberty. ... I do not deny that there are libertarian replies to consistent Georgists, but I was disappointed that Lester ducked the issue with his assertion that '... exclusive land ownership, for reasons of security and privacy, is usually a relatively trivial imposed cost on people and its absence a great one.' [5]

For some reason, Georgism simply did not crop up during the considerable time I was writing, and rewriting, *EfL*. I certainly did not intend to duck this issue. Indeed, I took it for a dead duck. I am happy to say why here, although probably at too short a length to impress its adherents. Not merely land but absolutely every product and even ourselves have a considerable part of their, market and non-market, value because of the demand of other people. Insofar as there is mere luck involved in this—and there will always be some, I suppose—we are still not thereby initiating imposed costs on other people. But if the state taxes us for whatever reason, then that *ipso facto* initiates an imposed cost on us. So, such taxes cannot be libertarian. I see no realistic case that a land tax could improve welfare any more than any other kinds of taxes. All the usual moral hazards, waste, unintended consequences, and knowledge problems associated with taxation appear to apply just as much to a land tax. Furthermore, land is not the inherently fixed finite resource that is supposed to distinguish it. For instance, superior agricultural techniques (producing vastly more food per acre, when politics allows) and building techniques (producing vastly more living space simply by building skywards, when politics allows) mean that the overall scarcity of land is declining. It is not declining at the same rate everywhere and would be declining faster with less political intervention. But the differences in price are themselves a market signal that taxes would, as ever, also disrupt and so slow growth. Admittedly, such developed agricultural and habitational land will command relatively higher prices. And greater populations and so even greater demand will ensue. But—as is so well argued in Julian Simon's *The Ultimate Resource*⁶—the greater division of labour, technological innovation, and increasing (physical and

⁶ 1981. Revised to be *The Ultimate Resource 2*, 1996.

human) capital accumulation will ensure that, paradoxically for common sense, the scarcity of land will continue to decline along with that of most resources (not that interfering with the market would obviously be desirable in any way even if this were not so).

Lester suddenly invokes the idea of the interpersonal comparison of utilities (an assertion which has an unacknowledged affinity with his earlier sympathy for cardinal utility). ... To my surprise, Lester says ‘general arguments can show that certain social rules are likely to promote over-all want-satisfaction.’ ... For a welfare improvement to occur, everybody must gain, and there is a rigid prohibition on any interpersonal comparisons of utility in Paretianism. This austere doctrine means, for example, that any movement from a slave to a free society requires the agreement (or compensation) of the slaveowners ... But the problem here has been misunderstood. The Paretian is not necessarily precluded from making moral judgments ... All he is arguing is that such appraisals have no relevance to a scientific analysis of what constitutes a welfare improvement. ... but Lester is reluctant to make ethical judgments.

In fact, I do explicitly acknowledge the affinity with cardinal utility in the rationality chapter, where I say that “Cardinal utility and economics will be discussed in more detail in the welfare chapter” (p. 48). And I explain it in the statement that “the *motive*-utility of aprioristic economics (that we must *aim* at what it most satisfies us to aim at) becomes the *goal*-utility of preference-utilitarian welfare (that we are better off if we really *achieve* what it most satisfies us to aim at)” (p. 49). Obviously, preference utilitarianism—which I am here defending only as a theory of welfare—requires some interpersonal comparisons or it would only be some form of Paretianism. In the welfare chapter, I allow broad, non-scientific, interpersonal comparisons of utility for the sake of argument: to show that this plausibly leads back to libertarian conclusions in any case. I cannot, of course, use “moral judgements” within the context of the compatibility thesis: the whole argument is that there is a non-normative practical congruence of maximal interpersonal liberty, want-satisfaction welfare, and private-property anarchy. Moral judgements are irrelevant to this and would distract from the central argument. That said, it is probably worth asking in passing whether we do not at least *partly* think that slavery is so *highly* immoral just because it is a terrible imposition compared to the relatively slight gain to the slave-owner. And this is an intuitive interpersonal comparison of utility.

anarcho-capitalists are very good at showing how a private enterprise system of law enforcement could work, how even national defense could be provided voluntarily, and how well-defined property rights would solve all the problems of the environment. ... Getting there, however, is not only an immense practical problem, but it is also an intellectual one which tests compatibility to the full. How can unfunded pension systems be wound up without hurting one generation? What about all those people who have become completely dependent on welfare through coercive national insurance schemes?

Barry here mentions another area where I might have said something but did not. Again, I do not see it as a hole in the theory. The compatibility thesis might seem to entail a compatible transition. But it is not part of, or entailed by, the compatibility thesis as a practical end-state that we must, whatever our current circumstances, always be able to move towards this efficiently in an immaculately compatibilist way. Many people have come to rely severely on certain regular political impositions. To cut off state pensions, etc., immediately is certainly libertarian but possibly not utilitarian (and possibly it is: a short sharp shock might well be better than having it drag on). Perhaps it is not a practical political proposition mainly because all government rests on opinion. So, some compromise might be necessary to get us out of the mess that we are in as quickly as is practically possible. Phasing these things out, although not fully libertarian, could ensure that no one is left in the lurch while all newcomers make their own preferred arrangements. A similarly imperfect possibility is selling off various ‘state assets’ to help with adequate funds for this, or tying their sale to somehow dealing with the dwindling ex-state aspects of provision. Concessions to what is practical appear inevitable. The various publications of free-market policy institutes, although not always consistently libertarian, are probably better on sorting out piecemeal, practical transitions. That said, some practical possibilities are clearly more libertarian than others and it would seem best that these are explored first—as they are not always at present.