

## Give Me that Old-Time Justificationism ... Not!

J. C. Lester

I thank Professor Otteson for his review<sup>1</sup> of *Escape from Leviathan (EfL)*. His exposition of what I wrote is relatively accurate. I shall here do my best to correct any misunderstandings and reply to his welcome criticisms, ignoring our various points of agreement and his generous praise.

Our main source of disagreement is soon stated:

Lester does not argue *for* his position; rather, he argues that the most likely objections to it fail. This tactic gives the book a somewhat unpleasantly defensive tone, and, more significantly, it limits the ultimate persuasiveness of the book's central thesis.

I also argue against many *obscure* objections—some of my own devising—to the book's central Compatibility Thesis<sup>2</sup> (not merely against “the most likely objections”). More important is that we have here a fundamental disagreement about epistemology. Where Otteson sees “a somewhat unpleasantly defensive tone” I see a desirable attempt to deal with real criticisms rather than an attempt at impossible supporting justifications that “argue *for*”. Purported ‘supporting justifications’ entail circularities, infinite regresses, or dogmatic assumptions. As critical rationalism<sup>3</sup> holds, all observations, arguments, explanations, and even logical inferences rest on, and thus logically amount to, assumptions. They thereby cannot offer support that transcends their assumptions (but those assumptions are either true or false, depending on the external facts). However, they can be criticised and tested—all within a framework of assumptions, of course (and presumably reality will tend to aid true assumptions to withstand criticisms and tests better than false ones, and true ones should resurface even if mistakenly rejected). This is not to object to the words ‘justification’ or ‘arguing for’ used in the completely different sense that means *explaining* a conjecture (including how we think it could fit the world) and *squaring* (or ‘justifying’) it with any known criticisms or ostensible counterexamples by adequately responding to them (which cannot, of course, offer any support to the conjecture: it only appears to be intelligible and remain unrefuted so far). Much of what I wrote in *EfL* could be recast into justificationist language with criticisms played down. No doubt that would then be interpreted as a ‘supporting justification’ or ‘arguments for’ by those thus minded.

Otteson attempts to give an exposition of my critical-rationalist approach to libertarianism. This includes the assertion that “Lester argues that his commitment to Popperian ‘critical-rationalist epistemology’ disallows any argument in direct defense of his compatibility thesis”. But I certainly did not say that. Every reply to a criticism of a thesis is, logically, a “direct defense” (and I have no “commitment” to critical rationalism: I simply use it). So, what does Otteson have in mind by “direct defense”? He explains that “Lester makes no attempt to persuade his readers that his thesis is plausible”. If all the criticisms of its plausibility have been adequately replied to, then that would seem to leave it as a potentially plausible theory (but plausibility is subjective, and a critic may still not feel it). Otteson appears to mean by “direct defense” some very general explanations that could be readily accepted. But what would be the point of such things? That seems to be more about propaganda, rhetoric, or sophistry than philosophy. I might explain the ‘plausibility’ (to an ignoramus) of the sun's going around the Earth by pointing out the Earth's apparent stability and the sun's apparent progress across the sky (and the ignoramus might agree). Plausible theories can clearly be false. Philosophers, as with scientists, should not aim for plausible theories but for true theories. However, as truth can never be demonstrated, all we can do is test and criticise (and test and criticise the tests and criticisms). Otteson seems to be hankering

---

<sup>1</sup> *The Independent Review*, Vol. 6, No. 1.

<sup>2</sup> That there are no practical clashes among liberty, welfare, and private-property anarchy.

<sup>3</sup> For detailed explanations of critical rationalism see, for instance, K. R. Popper, *Conjectures and Refutations* (London: Routledge & Kegan Paul [1963] 1978) and D. W. Miller, *Critical Rationalism: A Restatement and Defence* (Chicago and La Salle, Ill.: Open Court, 1994).

after ‘supporting’ intuitions.<sup>4</sup> But these are as epistemologically irrelevant as any geocentric intuitions. In any case, it seems doubtful that we can provide simple explanations that make the Compatibility Thesis plausible unless we are preaching to the choir: no statist would be likely to accept them as he would still have his list of unanswered criticisms.<sup>5</sup>

He continues: “If Lester’s project succeeds, then, according to Popperian epistemology, his theory will have been *corroborated*, not proved”. But this seems to be one place where Popper slips; and I erred in following his usage of that word. For ‘corroboration’ itself means strengthening or supporting. And no amount of the surviving of criticisms can logically strengthen a universal conjecture (truth or falseness arises with the assumption and later considerations simply check what is there already). The conjecture is merely compatible with the apparent evidence and so remains unrefuted.<sup>6</sup> Otteson then concludes, “The question nevertheless remains, however: What grounds will Lester’s arguments have provided for actually believing in his thesis?” I don’t know whether to laugh or cry. You cannot provide “grounds” for believing in a thesis. Finite evidence (itself ultimately conjectural) or arguments (necessarily based on assumptions) logically cannot support a thesis. But a single counter-example (if true) or critical argument (if sound) can logically refute it. If Otteson thinks that critical rationalism is a mistaken epistemology, then he needs to produce a better ‘criticism’ than that it leaves us without “grounds” for our theses: the very things that critical rationalism explains are impossible.<sup>7</sup>

Then Otteson opines that, “Lester’s project is incomplete (this book should be volume 2, the systematic exposition and defense of his thesis having appeared in volume 1)”. Now this is, again, very odd. Surely, what I have written is both an “exposition and defense” of my thesis at some length.<sup>8</sup> Admittedly, in order to be more pertinent, much of the exposition occurs in defending the thesis from criticisms. To attempt an “exposition and defense” of a thesis is clearly not necessarily to attempt to provide “grounds” for it. To describe a conjectural floating balloon and defend it from the arrows of criticism is not in itself to attempt to support the balloon in any way. The problem is partly that justificationists, or foundationalists, simply do not know what they themselves mean by supporting or grounding a theory. They mainly have an intuitive aversion to an “unpleasantly defensive tone” preferring the empty triumphalism of a supposed, but logically impossible, supporting justification.<sup>9</sup>

Otteson is roughly right when he says that *EfL* “understands *cost* as a loss of something that a person wants”. But he is not right when he continues, “This criterion answers the Friedmanian problems by creating the possibility of morally allowed infringements. There is no rights violation, for example, that cannot be allowed at all”. To stick to the positive nature of the Compatibility Thesis, I avoid such expressions as “morally allowable” and “rights violation”. Rather, to minimise (proactive) impositions when there is an inevitable clash is to maximise non-normative liberty (as *EfL* theorises it). I fail to see why the “danger with this strategy is that on Lester’s view some actions will actually be required at which a property-rights absolutist will balk”. For, following “a property-rights absolutist” (or, at least, what this is sometimes supposed to imply) will often be to proactively impose more severely overall, but on one party, which thereby lessens liberty.<sup>10</sup>

---

<sup>4</sup> As is evident in his “The Principles of Classical Liberalism Are Intuitive” (*Philosophy 1 On 1*, March 1, 1999).

<sup>5</sup> As I did until all of my criticisms of libertarianism were apparently answered (and then an involuntary psychological leap to the libertarian conjecture occurred).

<sup>6</sup> Although we might now say that the conjecture is ‘critically preferred’ compared to falsified or untested conjectures.

<sup>7</sup> This is like objecting to an argument against the existence of God because it does not explain the existence of God.

<sup>8</sup> As regards philosophy, at least. As explained in the book, it is supposed to be a philosophical defence of the relevant social-scientific literature.

<sup>9</sup> A more-recent response to similar complaints can be found in my “Arguing with ‘Libertarianism without Argument’: Critical Rationalism and how it applies to Libertarianism” (<https://philpapers.org/rec/LESAWQ>).

<sup>10</sup> Very often a near-absence of proactive impositions is impossible because there is a significant reciprocal clash. For instance, either you suffer the smoke-pollution from my fire or I suffer going without warmth and cooking:

To clarify, I am arguing that the correct abstract, non-normative, *theory* of the liberty that libertarianism presupposes is “the absence of [proactively] imposed costs”. This is not a “*definition* of liberty”, as Otteson calls it. And when I say that such “liberty admits of degrees” I mean only that—in inevitable clashes of the absence-of-imposed-cost conception—the objective libertarian *policy* must be to minimise any such impositions. I am not comparing this, as Otteson implies, with “competing welfarist, socialist, or democratic notions of liberty”.

Otteson conflates various things when he says that,

Lester calls his position ‘contingently deontological libertarianism’ (p. 57), by which he means that *if* liberty is to be maximized (for whatever reason), the rule of minimizing imposed cost avoids the difficulties other views face and seems to fit better with what most people mean by the term *liberty* anyway.

I now tend to call my central libertarian philosophy ‘eleutheric conjectural’ (i.e., an abstract eleutherology plus critical-rationalist epistemology).<sup>11</sup> This is opposed to natural rights, utilitarian/consequentialist, and contractarian schools of libertarianism (all of which are typically held to be both justifications and moral positions, but logically they could each be held both conjecturally and non-morally<sup>12</sup>). What I mean by “contingently deontological libertarianism” is only that no one should (in a non-moral, instrumental sense of ‘should’) infringe liberty even to attempt to maximise overall liberty, or welfare, because it will not work in practice. This is a form of rule consequentialism that is supposed to get around the paradoxes, as I perceive them, of strict deontological libertarianism even when liberty declines overall (a problem Nozick raises but does not solve, I argue: p. 220, n. 165). It is true, however, that I am arguing throughout hypothetically about the consequences of maximising liberty and not advocating it (hence my defence remains positive or non-normative); and, separately, that I do argue that “the rule of minimizing imposed cost avoids the difficulties other [libertarian] views face”; and, again separately, that my absence-of-imposed-cost conception “seems to fit better with what most people mean by the term *liberty* anyway” in its interpersonal sense, at least (however, the abstract *theory* of liberty-in-itself should not be confused or conflated with the practical *policy* of maximising such liberty when clashes occur).

On Otteson’s remarks about interpersonal utility comparisons (IUCs), I should mainly like to emphasise the, predominantly, hypothetical approach that I am taking. It is usually supposed obvious that welfarism leads to political redistribution and interventions of various sorts. I argue that even if we allow that general IUCs are possible in an approximate way, there are better<sup>13</sup> general explanations that libertarianism gives us more of what we want (i.e., preference-satisfaction welfare, as I defend it). To reject totally any discussion of IUCs leaves libertarianism in a very weak position. What is the point of a ‘liberty’ that libertarians do not even deny could be a disaster for general welfare? And it appears perverse to withhold judgement on which of two societies is better off when, say, one is very poor and severely oppressed while the other is very affluent and largely free. Otteson suggests there is a problem when, “we are attempting to compare the relative utility increase or decrease of concerned parties”. But

---

both the allowance and the disallowance of the fire will proactively impose, but on different people (confused criticisms of deontological or rule libertarianism often see only the allowance of pollution as imposing). In such cases, it is impossible to achieve anywhere near perfect liberty or to apply any plausible interpretation of the so-called ‘non-aggression principle’, for liberty can only be maximised as best as is practical; and this might involve compromise or compensation.

<sup>11</sup> A recent explanation and defence of my general philosophical approach is “The Heterodox ‘Fourth Paradigm’ of Libertarianism: An Abstract Eleutherology plus Critical Rationalism.” *Journal of Libertarian Studies*, 23: 91-116 (2019).

<sup>12</sup> To be non-moral these can be explained and defended as regards their objective aspects without any advocacy (which is always a logically separate matter): “natural rights” can be interpreted along the lines of an anarchic (or spontaneous) natural language; “consequentialism” can refer to the greater preference-satisfaction of a libertarian system; “contractarianism” can refer to the social contract that it is most likely that informed and prudent people would prefer.

<sup>13</sup> Because they better withstand criticism.

in explaining the likely general welfare-effects of private-property anarchy, I do not—and need not—defend either precise cardinal utility or comparisons between specific individuals.<sup>14</sup>

We are then told that,

In the end, the principal value of Lester's book is as something like a catalog of arguments defending libertarian or anarchistic political thought against various detractors and their objections.

Assuming critical rationalism, that is the best that anyone can do (although I only deal with the philosophical aspects). It might well be true that "Not all of the defenses work, and in a few cases [my] dismissals are too hasty"—especially given the number and tentative nature of many of the defences. But if Otteson had gone beyond this general claim and given any specific examples, then I would have been happy to respond to them in more detail and so further the debate.

Otteson's penultimate sentence returns to the main issue between us:

I remain disappointed that he did not undertake to defend his own thesis directly, and I hope that in the future he will relax his commitment to Popperian epistemology and undertake such a defense.

What is it to "undertake to *defend* [one's] own thesis directly" but to reply to the best or typical criticisms that one can find or think of? And "Popperian epistemology" just is about undertaking such direct defences from attacks. Otteson appears to think that a so-called "defense" that does not mention criticisms but only attempts to "argue *for*" is somehow better or, at least, also needed. Can he explain how that can genuinely *defend* a thesis from a single sound, but ignored or unknown, refutation? Or hope to silence critics when we are thereby refusing to answer their specific criticisms?

On a final note, I should like to re-emphasise a point I made at the start: any critical-rationalist approach could be re-written to disguise its true nature and present it as so-called 'arguments for' or a 'supporting justification'. A critical-rationalist scientist could present his theory as unavoidably a universal conjecture, which he has tested in various ways but which must always be open for further testing. Or he could claim that his theory is 'justified' as true, its having been 'grounded' on the self-same evidence. Such a disguise would not be honest and it would risk discouraging people from formulating, and taking seriously, new criticisms and new conjectures: why bother with new criticisms or conjectures when the truth has been 'demonstrated' for all those with the wit to understand? That is the path to an illogical and unfruitful dogmatism.

(October 2001; revised September 2021.)

---

<sup>14</sup> However, the normal welfare-responses of abstract individuals can be, and do need to be, approximately compared in order to derive self-ownership and external property from first applying the theory of liberty.