Eleutheric-Conjectural Libertarianism Can Avoid Interpersonal Utility Comparisons

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Until quite recently, it has appeared that eleutheric-conjectural libertarianism (ECL)[1] could not avoid some degree of interpersonal utility comparisons (IUCs). And this aspect has been objected to by some of its libertarian critics, notably economists.[2] Indeed, this aspect does make the theory less compatible with economics than the rest of the theory. And one of the main problems[3] that ECL is intended to solve is how an abstract theory of liberty can be compatible with the pro-free-market conclusions of many economists.[4] Being more compatible with economics would make the theory more comprehensive, comprehensible, and cogent.[5]

To outline the problem. The abstract theory of liberty is "the absence of interpersonal initiated constraints on want-satisfaction" (for short, "no initiated impositions"). But, in practice, such complete or perfect liberty is not always attainable. In which case, liberty can only be maximised overall (which is the same as minimising initiated-impositions overall). This might appear to imply the need for some IUCs at three stages. 1. In the event of hypothetical pre-propertarian clashes of liberty, defences of liberty, and rectifications of infractions of liberty; to arrive at solutions or remedies. 2. To derive general libertarian rules in a state of nature; after which, both the rules and the remedies can then be institutionalised as legally enforceable property and claims. 3. For applying those property rights and claims in everyday cases. If, in each case, one tries to imagine and compare the utility consequences for the various separate parties involved, then that does appear to be an IUC. However, it now appears that there may be a way around this problem. And as this is, ultimately, fairly straightforward and even "obvious" (once the explanation is understood), it is mainly remarkable that it has taken this long to arrive at it.

In fact, there are at least two potential ways to avoid the use of IUCs at any stage. The first attempt is to adapt *A Theory of Justice*'s (*TJ*) "Original Position".[6] In the *TJ* case it is used to arrive at a conception of "justice as fairness". Assumptions are chosen that are intended to generate an abstractly individualistic position on just rules but, at the same time, with no possibility of any personal bias. Consequently, one should imagine people with no knowledge of their personal traits or where they are, or will be, in society. But they do know of their fundamental interests simply as being persons, that they are risk averse (and so would not want to risk being in terrible circumstances even if that were to increase overall welfare in society), plus general facts about the social and natural sciences. Their specified task is then to choose the principles of social and political justice that they find to be the most acceptable.

In the posited adaptation of this idea, one should make similar Original Position assumptions. But now the specified task is to choose the principles for minimising initiated impositions that they find to be the most acceptable. And the claim is that the participants will arrive at the solutions that ECL posits. Note that the assumed circumstances of both thought-experiments mean that there are no IUCs; there are only *intra*personal utility comparisons (which economics allows).

However, while this first attempt may solve the problem of avoiding IUCs in principle, it immediately seems that an Original Position approach is unnecessarily elaborate and far-fetched. How

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[1] See, for instance, Lester, J. C., "Eleutheric-Conjectural Libertarianism: a Concise Philosophical Explanation" *MEST Journal* 10 (2): 111-123 (2022).

[2] For instance, Block, W. E., "Response to J. C. Lester on David Friedman on Libertarian Theory", *MEST Journal*, 7: 1 (2019), 127-155.

[3] The two other main problems being how an *a priori* interpretation of *homo economicus* and a preference utilitarian conception of welfare can also explain and defend economics in terms of rationality and welfare.

[4] Most of these economists not being self-described "libertarians".

[5] But all of this will remain incomprehensible to those libertarians, whether philosophers or not, who have yet to understand that many of libertarianism's serious philosophical problems require an abstract (pre-propertarian and non-normative) theory of liberty. They should read Lester 2022 first.

[6] As described in Rawls, John, [1972] 1983, *A Theory of Justice*. Oxford: Oxford University Press.

could one set aside all of one's actual beliefs and convictions?[7] And how could one imagine knowing general facts about the social and natural sciences that one does not know, and what they might imply? (And why, in *TJ*, would some form of libertarianism not be chosen instead of its manifestly "liberal", in the US sense, general principles?) The problems that ECL needs to solve here are much simpler and more specific than finding a general theory of justice. Therefore, why not, instead, simply allow the thought-experimenter to be whoever one actually is in terms of personal traits, position in society, and what one knows (or thinks one knows)? None of these things seem to give rise to an apparent problem. So, one can simply imagine oneself successively being on the various sides of any posited liberty-clashes. Or, if it seems significantly different and clearer, imagine oneself being in an indefinitely iterated game whereby each time one has an equiprobable chance of being in the situation of any of the people whose liberties are clashing. Then the specified task is to choose which remedies, rules, property, or claims (depending on which problem is being addressed) seem likely to minimise any overall, or average, initiated impositions on oneself. This appears to be altogether simpler, clearer, and more cogent than an Original Position approach while still, apparently, avoiding IUCs.

Is this implicitly excluding people with abnormal utility functions?

But what of people who have highly non-standard preferences or utility functions? At the extreme, psychopaths or genuine "utility monsters"[8] (whether by nature or nurture). Perhaps they suffer greater initiated impositions than normal people. Are they being tacitly excluded from the thought-experiment in order to arrive at the relevant results? And is some sort of IUC going on if their preferences are either deemed not to count or not to be given weight in proportion to their unusual strength?

We can never really know the intensity or cardinality of other people's preferences. But, as mainstream economics assumes, their rank or ordinality is revealed by the choices that people actually make. Anyone can do the thought-experiments. As any person with alleged non-standard preferences places themselves in the various positions of any libertarian clashes, or does the iterated game version, they may still arrive at the same solutions for minimising the initiated impositions they suffer. They just have greater intensity of feeling in each case. In real life examples, this might mean that they will occasionally be abnormally affected negatively in some clashes. But, it seems, they are just as likely to be abnormally affected positively. However, what if they have some utility bias that somehow confounds this "balancing result"? Then it looks as though we can only fall back on the view that there are long-run libertarian reasons not to give in to libertarian "utility monsters", etc., in the short run.[9]

All of this has been a highly abstract and approximate first statement of the problem and its possible solution. However, the thought-experiment does appear to offer a serious hope of avoiding even tacit IUCs and doing its intended job. Consequently, ECL's compatibility with economics may be provisionally conjectured to be even better than it was originally.

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[7] This point is made, for instance, in Sandel, Michael, (1982 [2nd ed. 1998]) *Liberalism and the Limits of Justice*. Cambridge: Cambridge University Press.

[8] As posited in Nozick, Robert, 1974, *Anarchy, State, and Utopia*, Oxford: Basil Blackwell.

[9] On the (self-defeating) evolution of "utility monsters", see Lester, J. C. *Escape from Leviathan: Libertarianism Without Justificationism* (Buckingham: The University of Buckingham Press, [2000] 2012), pp. 65, 69, 77, 159, 160.