

Avoiding Interpersonal Utility Comparisons in Eleutheric-Conjectural Libertarianism

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The problem

Until quite recently, it has appeared that eleutheric-conjectural libertarianism (ECL)¹ could not avoid some degree of, very broad, interpersonal utility comparisons (IUCs). And this has been objected to by some of its libertarian critics, notably economists and proprietarians.² Indeed, this aspect does make the theory less compatible with economics than the rest of the theory and it is thereby a significant problem. This is because one of the main problems³ 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 should make ECL theory more comprehensive, comprehensible, and cogent.⁵

Here we can only attempt to outline the problem. The ECL abstract theory of interpersonal liberty-in-itself is “the absence of interpersonal initiated constraints on want-satisfaction” or, for short, “no initiated impositions”. But, in practice, such complete or perfect liberty is not always attainable: there will often be clashes of initiated impositions. In which case, liberty can only be maximised overall (which is the same as minimising clashing initiated-impositions overall). This might appear to imply the need for some IUCs at three general stages. 1. In the event of hypothetical pre-propertarian *direct* 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; only after which, both the rules and the remedies can then be institutionalised (for practical efficiency) as legally enforceable property and claims. 3. For applying those property rights and claims in some everyday cases. If, in each case, one tries to solve these “clashes of liberty” (to collectively name them) by imagining and comparing the utility consequences for the various separate people 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 so long to arrive at it.

Two potential solutions

In fact, there are at least two potential ways to avoid the use of IUCs at any stage. The first attempt is to adapt the “Original Position” in *A Theory of Justice (TJ)*.⁶ In the *TJ* case it is used to arrive at a theory of “justice as fairness”. Assumptions are chosen that are intended to generate an abstractly individualistic position but, at the same time, with no possibility of any personal bias. Consequently,

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

² For instance, as an example of both, this is one of the many criticisms in Block, W. E., “Response to J. C. Lester on David Friedman on Libertarian Theory”, *MEST Journal*, 7: 1 (2019), 127-155.

³ The other two main problems being how an *a priori* (not a definitional) interpretation of *homo economicus* and a preference utilitarian theory of welfare (not the moral theory) can also explain and defend pro-free-market economics in terms of rationality and welfare. This is done because “free-market economics” gives the general impression of claiming, showing, or assuming that rational agents in free markets promote welfare and liberty. But then economists are usually content to be completely unable to defend this in any philosophical way. Consequently, the various philosophical criticisms of this general impression tend to go unanswered (or are sometimes agreed with) even by libertarian philosophers.

⁴ Most of these economists are not self-described “libertarians”.

⁵ All of this will remain incomprehensible to those libertarians, whether philosophers or not, who are still in an initial, and relatively superficial, paradigm of property, or rights, or some bundle of principles (from economics or morals). And this probably exceeds 99% of all libertarians. They have yet to understand that many of libertarianism’s serious philosophical problems first require an abstract (pre-propertarian and non-normative) theory of interpersonal liberty-in-itself, which can then be applied to create a positive theory of liberty-in-practice (and only after that can normative defences properly be made). They should first read Lester 2022.

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

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 human beings, 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 social and political principles that they find to be the most acceptable. The chosen principles should constitute the best practical interpretation of the theory of “justice as fairness” (perfect fairness is not possible).

In the posited adaptation of this idea, one should make similar Original Position assumptions. But now the specified task is for our abstract people to choose the principles for minimising initiated impositions that they find to be the most acceptable. The chosen principles should constitute the best practical interpretation of the theory of “liberty as no initiated impositions” (perfect liberty is not possible). Note that the assumed circumstances of both thought-experiments mean that there are no IUCs. There are only *intrapersonal* comparisons (whether of utility or of preferences, if they are distinguished), which economics does allow.

This first attempt may solve the problem of avoiding IUCs, in principle. However, it immediately seems that such an Original Position approach may be unnecessarily elaborate and far-fetched. And this also makes the conclusions allegedly reached more dubious. How 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 abandon the Original Position aspect and 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 any clear problem. One can simply imagine oneself successively being on each of the various sides of any posited liberty-clashes (as one may sometimes be in real life). Or, if it seems significantly different and clearer, imagine oneself being in a game whereby 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.

For instance, one thought-experiment question that can be asked is this: which is the greater initiated imposition for you, 1. a rule allowing slavery⁸ so that one could be either a slave-owner or a slave (but with one’s slavery being far more likely, as one owner tends to own many slaves) or, 2. a rule disallowing slavery? Virtually everyone would find 1 to be the greater initiated imposition. Hence, disallowing slavery is initiated-imposition minimising in almost universal intrapersonal terms.⁹

This second approach appears to be simpler, clearer, and more cogent than an Original Position approach while still, apparently, avoiding IUCs.

Possible problems with this solution

Can we find a clear fault, or at least possible problem, with this solution? One possibility is that it is some version of the fallacy of composition. Even if it were true that *every* individual person would find the “no slavery” rule to be initiated-imposition minimising for himself, this need not entail that this rule must be initiated-imposition minimising for society as a whole. It is difficult to conceive of a possible

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 A critic suggests that this does not work because “slaves are black and you are not”. But the very word “slave” comes from “Slav”, as so many Slavs were captured to be owned as property; and they were white. And there are many other examples of whites being slaves throughout history. However, that is not the point. One successively imagines oneself in the circumstances of each party in any clash of liberty (or assigns an equiprobable chance of being any of them). Libertarianism applies to all human persons.

⁹ And perhaps a significant consequence of this argument is that economics itself now has a way to assess the welfare effects of certain options without being limited to Pareto efficiency or resorting to IUCs.

inconsistency between the two in this case. Perhaps that is simply due to lack of imagination or enough serious thought on the matter. But even if an inconsistency is logically possible, then it still might not be sufficiently realistic to constitute a practical problem for avoiding IUCs.

Another possibility is that this solution might seem to exclude people who have highly non-standard preferences or utility functions: at the extreme, psychopaths or genuine “utility monsters”¹⁰ (whether by nature or nurture). For they suffer different and even greater initiated impositions than normal people. Are they being tacitly excluded from the thought-experiments in order to arrive at the alleged results? And is some sort of IUC taking place if their preferences are either deemed not to count or not to be given weight in proportion to their unusual nature or 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 non-standard preferences places themselves in the various positions of any liberty clashes, or does the game version, they may still choose the normal solutions for minimising the initiated impositions they theoretically suffer. It could be that 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. And these two balancing possibilities would seem to cancel each other.

However, what if they have some asymmetrical utility bias that somehow confounds this “balancing result”? For instance, they would dislike being made into a slave (or even positively quite like it) but would dislike far more being denied the chance of owning slaves. If that were to occur, then it might look as though we must go back to something like the Original Position approach after all. But the same question then arises. Does that also somehow tacitly exclude people with abnormal utility functions? If neither of these alternatives solves the problem, then it might appear that we can still fall back on the view that there are long-run reasons not to give in to libertarian “utility monsters”, etc., in the short run.¹¹ However, those arguments also involve IUCs. Perhaps the best that we can do for now is say that ECL theory will maximise liberty for the overwhelming majority of people, including most of those people with unusual preferences.¹² If a tiny minority of people are so unusual that they would arrive at eccentric and even anti-social solutions to basic clashes of liberty, then they have to be excluded from the thought-experiments or considered outweighed.

All that being said, it is not at all clear that such utility-asymmetrical and anti-social outliers are much more than a mere logical possibility. And it is part of ECL theory that it is only intended to fit the real world. Would anyone really risk a chance of being a slave for as high as an even chance of owning a slave? Suppose, for the sake of argument, that some tiny minority would make this choice. In that case, it appears that such people could have the option of entering into slave-gambling contracts with each other. But, 1) this appears to be unheard of¹³ (and surely not only because current legal systems would not allow it¹⁴), and 2) that would, in any case, be an entirely libertarian solution to the problem even if it were to occur. And perhaps there are analogous fully libertarian solutions to other types of this possible problem.

Conclusion

This very brief foray has been a highly abstract, provisional, and approximate first statement of possible solutions to the IUC problem in ECL. However, these thought-experiments do appear to offer a serious hope of avoiding even tacit IUCs and doing the intended job. And if they cannot be made theoretically

¹⁰ As posited in Nozick, Robert, 1974, *Anarchy, State, and Utopia*, Oxford: Basil Blackwell.

¹¹ 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. 69, 77, 159, 160, 213.

¹² As Aristotle says, “It is the mark of an educated man to look for precision in each class of things just so far as the nature of the subject admits” (*Nicomachean Ethics*, Book 1, Ch. 3).

¹³ Unlike, say, people who choose to be eaten and people who choose to eat them.

¹⁴ Any consenting behaviour between adults is very hard even for a state to prevent; although public punishments of it can make most of it completely covert.

perfect, perhaps they are a significant advance in the right direction. At least IUCs need no longer be resorted to explicitly and pervasively when dealing with clashes of liberty. Consequently, ECL's compatibility with economics is provisionally conjectured to be better than was originally explained.