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THE LIBERTY PRINCIPLE

There is a view about morals and politics which says that no one has a right to interfere with anyone's freedom except to prevent some interference with freedom. This view, since its fundamental principle stresses freedom or liberty, is often called 'libertarianism'. Suppose we understand interference with freedom as the use of force (broadly construed) or fraud against somebody: then the libertarian principle is expressed by the slogan 'No force or fraud, except to prevent force or fraud'. Something along these lines was endorsed by J. S. Mill, who in his classic work *On Liberty* proposed a similar Liberty Principle which he believed should be "absolutely governing" for society. Mill writes:

That principle is, that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.¹

Mill adds some conditions to this, and his version differs from ours in taking the prevention of harm, rather than the violation of liberty, as the sole condition for interference. Nevertheless, he agrees that where a matter affects only one individual, or other people only with their free and informed consent, that individual should be sovereign.

Stated in Mill's version or ours the Liberty Principle sounds plausible, and it has even seemed obviously true to many people, especially in the modern West. It has not always seemed obvious. Fans of liberty have sometimes been suspected of being libertines. The licentious Don

¹ Mill, *On Liberty* (henceforth OL), reprinted in *The Utilitarians* (Garden City, NY: Doubleday, 1961) Ch. 1.

Giovanni in Mozart's opera sings 'Long live liberty', and we are not meant to approve. Liberty has been associated with revolution, and both the French Revolution and the American War of Independence have surely played a part in making freedom fashionable. Indeed, the word 'liberty', which appears on U.S. coins, has a special resonance in the Land of the Free. Its popularity notwithstanding, the practical implications of the libertarian idea are far from obvious. I would like to bring out some of these implications in order to help readers decide whether the view yields a plausible recommendation about how people should act.

LIBERTY AND INTERFERENCE

"There should be no interference with liberty except to prevent interference with liberty": how shall we understand this? I will concentrate on an interpretation worked out by Jan Narveson, a philosopher from the University of Waterloo who has given an unusually clear and detailed defense of libertarian ideals. On Narveson's theory, which has in turn been influenced by Robert Nozick, libertarianism is a program with far reaching consequences for states and societies. The role of government especially turns out to be quite different from, and considerably more restricted than, the present role of governments in twentieth century democracies.²

Unlike Mill, who starts from the idea that overall happiness or utility should be maximized, Narveson derives his libertarianism from premises about what kind of contracts rational human beings will enter into. Roughly speaking, he believes it rational for individuals to bind themselves to the principle of liberty, provided that others are bound by the same principle:

² The works referred to will be Narveson's *The Libertarian Idea* (TLI) (Temple University Press, 1988), *Moral Matters* (MM) (Broadview Press, 1993), and 'Libertarianism, Postlibertarianism and the Welfare State: Reply to Friedman', (RF) in *Critical Review*, Vol. 6, No. 1. A more recent work is *This is Ethical Theory* (Open Court, 2009). Nozick's *Anarchy, State and Utopia* (Basic Books, 1974) will be cited as ASU.

each person agrees not to employ force or fraud against others, provided they in turn agree not to resort to force or fraud. If these agreements are honored, the free interaction of people will give rise to more prosperous and efficiently operating societies than those which now exist. If, however, the principle is widely violated in arbitrary ways, everyone or nearly everyone will be worse off, since people will not be able to trust each other, opportunities to cooperate will be lost, and much effort will be wasted on conflict and self-protection. Of all the possible principles which people could agree to be bound by, Narveson believes the Liberty Principle is the most reasonable candidate for universal agreement, being the least demanding and intrusive. Its adoption is justified, not because doing so will maximize the amount of happiness in the world (whatever that means), but because it's the best bargain each individual can hope to strike, given the competing interests of others.

In spelling out the specific form that libertarianism takes, much will depend on what counts as personal freedom and what counts as interference. Different consequences will follow depending on one's understanding of these crucial notions. After clarifying these it will be possible to go on to consider what exceptions, if any, there are to the principle of liberty, and what justification such exceptions may have. One must also ask what sorts of disputes will be left unresolved by the Liberty Principle, for it is by no means clear that all conflicts can be settled by appealing to it, even if it turns out to be true without exception. To begin with, at any rate, two questions present themselves in connection with the Principle. One question is, what constitutes liberty and interference therewith? And a second question is, when does someone have the right to interfere with a person's liberty?

Let us consider these questions further, starting with the prior question of what liberty and interference are. If libertarianism is to base moral norms on the concepts of freedom and

interference, it should not smuggle morality into those concepts. To do so would be to assume what needs to be discovered. Thus, we should try to find a neutral or merely descriptive account of what it is to interfere with someone's freedom, or at least one which does not beg the question of when such interference is justified. This may be tricky, since "interfering" often carries a sense of "inappropriate meddling" and the scope of "freedom" or "liberty" is often restricted to what one may do without moral objection. Libertarianism may sometimes gain a spurious advantage from this confusion, which can make the Liberty Principle seem more plausible than otherwise: it seems like a truism to say that one should be allowed to relate to other people in ways which do not *unjustifiably* disturb them.

We want to say what freedom is, then, but our account of freedom and interference should avoid turning libertarianism into a truism. Let us follow Narveson's policy in *The Libertarian Idea* (Ch. 2) and suggest that people are free to the extent that they can do what they want. This has the consequence that one may become freer by reducing one's desires, so that a contented slave can be counted as a relatively free person. Such a result may not be objectionable, however, as someone who wants very little may indeed be freer to do or have what he or she wants (cf. TLI 27f). Accepting this definition we can proceed (still following Narveson) to say what interference with liberty is. A natural proposal is that to interfere with someone's liberty is to prevent or hinder that person from accomplishing some desire (TLI 30f). There is a qualification that is significant. For person A to interfere with person B's liberty is for A to bring it about that B is unable to do what B would otherwise be able to do even without A's assistance (TLI 30). The qualification is intended to rule out cases where A, for example, refuses to see or play chess with or marry B. It follows that a film star is not interfering with the freedom of fans by not paying them the personal visit of their dreams. In such cases A does not violate B's

liberty because visiting with, playing chess with or marrying A is not something B could do without A's assistance. A may be refusing to *promote* B's liberty, but this does not mean that B's liberty is being interfered with.

Narveson sometimes explains the notion of interference by reference to force or fraud. 'Force' here is understood in a very general way, such that smoking a cigarette in a restaurant next to someone who is irritated by smoke is a case of force--forcing that person to breathe an unwanted substance. Evidently this is a wider use of 'force' than is usually invoked by the expression 'using force against'. What constitutes force needs a bit more discussion, since force is normally a conditional thing, compatible with a certain freedom. That is, even when we say that one is forced to do something one is generally still free to choose between more or less inconvenient alternatives. "Your money or your life" epitomizes one, rather extreme, such choice, but there are many other examples: if you don't like the air where you are, you are free to go to another restaurant; if you don't like the taxes you can retire to a Caribbean tax haven, and so on. In general, Narveson grants that a situation is a case of force where someone is caused to have none but unpleasant alternatives.

We can take this use of 'force' as a further explication of the interference notion. Of course it is possible to interfere with the freedom of someone without intending to do so--for instance, when pursuing incompatible goals of one's own. Narveson goes further in suggesting that interfering requires positive action on the part of the interferer (TLI 31). This sounds like a departure from the natural notion of interference, since one can sometimes interfere while remaining passive. (Suppose one happened to be stuck in the middle of a road, thereby interfering with the flow of traffic, for instance.) Moreover, the distinction between active and passive behavior is unclear. Is neglecting one's infant child an active or passive form of

behavior? A case can be made either way: the parents deliberately starved the child (active) or they simply didn't perform the feeding act (passive). For the present purposes we will go along with Narveson and restrict ourselves to cases of active interference, ignoring border disputes which beset the active/passive distinction.

It must be borne in mind that such an account still yields a quite wide use of the expression "to interfere". From Narveson's characterization of liberty and interference we can draw conclusions which may be surprising to some libertarians (though perhaps not to Narveson himself--see TLI 33). For instance, if person A has some money which person B wants, then by forcibly preventing B from stealing the money A is interfering with B's liberty. Aside from the commonly value-laden usage of 'liberty' and 'interference' which were mentioned earlier, some of the strangeness of this result may be due to the fact that in the example B's interference is greater than A's. If A's unwilling accommodation of B would be a far greater interference, we hesitate to say that A's preventive action constitutes interference with B. Nevertheless, it will still be interference according to the present usage if it prevents B from realizing some desire.

Narveson holds that libertarian societies will recognize certain individual rights as basic, but these rights will be merely negative rights to freedom, rather than positive rights (TLI 59f; RF 47; MM 34). What is a negative right? A negative right is the right not to be interfered with. Negative rights bring with them obligations on the part of others, obligations which are distinguished by the fact that they can be fulfilled simply by doing nothing. The obligation to respect a person's negative right is the obligation or duty to refrain from interfering with that person's activity. This can be satisfied without doing anything in particular, and one can even honor a negative right by being absent altogether.

Positive rights, on the other hand, bring an obligation on the part of someone to act rather than to simply refrain from acting. Thus, if Fred has a positive right to a certain job, for example, then someone else--Mary, perhaps--has an obligation to help him in that regard. More exactly, both positive and negative rights involve three terms. If person A has a positive right with respect to B to do x, then B has an obligation to help A do x. If A's right with respect to B and x is negative, B must allow A to do x but it does not follow that B should assist A. It is noteworthy that, while Narveson denies that there are positive rights, Mill seems to allow for some, for he grants that there are 'many positive acts for the benefit of others, which [a person] may rightfully be compelled to perform' (OL 10). Giving evidence in court, sharing in the common defense or other joint work of society, and acts of individual beneficence, such as saving life, are mentioned by Mill as instances. Mill can justify these cases of compulsion on the ground of increasing the general good, but this justification is not open to Narveson. Will it be possible to require such duties of citizens in a libertarian state? We shall return to this question later.

The above characterization of positive and negative rights is incomplete as it stands, for there is no indication of the strength of the obligations in question. For instance, saying that Fred has a positive right with respect to Mary doesn't tell us how much Mary is obliged to put herself out in order to accommodate him. She must lift a finger, presumably, but what else must she do before she has done enough to meet her obligations? Mary has rights of her own, including a right not to be bothered by the likes of Fred. Hence, if talk of this sort is to be adequate for adjudicating conflicts of interest, we must be able to extend it by talking about the strength and priority of rights. Some method is needed for deciding what to do when rights conflict.

The same considerations apply to talk of negative rights. Two people who want not to be interfered with in accomplishing their plans and activities may find themselves in conflict. How

strong are their obligations not to interfere with each other? In such an instance some right must prevail and another be overruled. Hence, if we are to use this quasi-legal vocabulary of rights and liberties we have to decide who has and who doesn't have the right to a given liberty. We need a vocabulary and a theory to describe liberty rights: how they are to be assigned and how they are to be honored.

PROPERTY RIGHTS

We have seen that on Narveson's libertarian principles a person has the negative right not to be interfered with, subject to the constraint that he or she is not interfering with the liberty of anyone else. Liberty has been characterized roughly as the ability to do what one wants, while to interfere with liberty is to actively prevent people from doing what they want, especially by force or fraud. Granting all this, we can now ask what it would be like to take liberty rights seriously. Which kinds of freedom and interference are to be allowed? As we saw, one can, for example, disturb others as an intended or unintended consequence of one's activity, as when they are bothered by one's cigar smoke, or one's industrial noise. Here we have an instance in which people may end up hearing or inhaling what they do not want to. Actions can also interfere by thwarting someone's intentions, as when the restaurant one had hoped to dine at is already full. In view of all the different ways to interfere, some permissible and some not, we require clarification. After all, on the small planet we inhabit the freedom of one person often comes at the expense of someone else's freedom; two people can sometimes agree to keep out of each other's way simply by avoiding each other; but it would be impossible for everybody to agree to keep out of everybody else's way. This poses a problem for libertarians. To put it once more, according to our proposed notions of freedom and interference there is a great deal of interfering

going on all the time. If everyone is interfering with everyone else in one way or another, we need more than the liberty principle to help us settle our disputes. How then shall we decide whose interference is to be tolerated?

There is no simple way to solve every conflict of wills, and no straightforward rule will always decide who is interfering wrongly with whose liberty. Libertarians typically put forward certain general principles, however, and some specific policy suggestions. Their determinations of which actions violate rights usually involve the notion of *property*, and Narveson emphasizes the relationship between property and liberty. One's property is something one has legitimate control over. For example, on the view that one's eyes and kidneys belong to oneself and are one's own property, nobody else may simply help himself to them. In fact, Narveson suggests in passing that if we count our bodies as our own property the libertarian view may be tantamount to a claim that the right to our persons as property is the sole fundamental right there is (TLI 66).

Starting with this right to their own persons, people may act so as to acquire other property, such as land and capital. They have the right to sell their labor to the highest bidder, and to reap the fruits of their own enterprises, thereby accumulating additional capital. In acquiring land they gain new rights, such as rights to privacy and to access that they do not have when on other people's land. People can take liberties on their own land that they cannot take while visiting the neighbors. An invocation of property rights can thus help settle many questions about liberty, making it easier to decide who is minding his own business and who isn't. One will be entitled to pollute one's own body or real estate with cigar smoke or noxious waste, but not the real estate or bodies of one's neighbors.

It may be worthwhile to expand on this for a moment. Consider two people, one of them a smoker and the other a person irritated by tobacco smoke. In the terminology set out above, the

smoker is interfering with the liberty of the non-smoker if there is smoking when the two of them are together, for the non-smoker is prevented from breathing freely. On the other hand, the non-smoker is interfering with the liberty of the smoker if smoking is actively hindered or prevented. Consider again two people with different musical preferences: one loves hip hop but can't stand Wagner, while the other has opposite tastes. By playing music in earshot or by causing no music to be played each interferes with the other's liberty.

Property rights can sometimes help solve the problem, according to the view under discussion. If it's your land or house, then insofar as the strains of *Tannhäuser*, or *Bitch Better Have My Money* as the case may be, don't bother the neighbors you get to control the environment. Even free speech, which is sometimes treated as a sacred privilege, turns out to be subject to the limits of property on this view. I can talk to myself all I want, but I can't sit on your porch and preach to you unless you allow it, or disturb your peace with a bullhorn from the sidewalk. Nor are any newspaper owners obliged to print another person's views in their papers.

Property rights depend importantly on historical considerations about the acquisition and transfer of property. People don't have rights to keep things that they have stolen, for example. How the property in the world should have been distributed in the first place, and whether we should accept its present distribution as more or less just, are things a full fledged theory of property needs to explain. A satisfactory theory of property should say both what a just initial distribution of property is and how we can make contracts transferring it. We need an account of initial acquisition in order to get things rolling, as well as some principles about the current state of affairs--embodying as it does no doubt the results of countless crimes and violations of freedom.

Narveson's account of original acquisition goes something like this: suppose there is something that is unclaimed: no one has taken possession of it. Subsequently, someone starts to make use of the thing in ways that exclude other uses, for example, planting crops on a piece of hitherto unoccupied land. That person is now the owner. No one else can claim to have been deprived or dispossessed, inasmuch as nothing that was theirs has been taken away. The explorer or entrepreneur now enjoys the results of the enterprise. Because the property rights of others have not been interfered with, the new possessor's own actions cannot be interfered with. What constitutes taking possession is not always clear. Farming a piece of land would count, but simply looking at it and saying 'I hereby claim this' might not (TLI 86). In any case, on Narveson's view the new owner can say that no one else has been left worse off than they were before, since no one had previously claimed or used the land. (Cf. Nozick's interesting discussion in ASU 174-82).

Property theorists sometimes refer to the "Lockean Proviso", a nod in the direction of John Locke's theory of initial acquisition. Locke held that one could gain ownership of an unclaimed thing by "mixing one's labor with it", provided that enough and as good was left in common for others. Narveson takes note of this principle, but suggests that one who stakes a claim need not leave anything for others. The person who has staked a claim is not interfering with those late on the scene because he or she is *already there* (TLI 85).

Have the armchair critics and those too late to divide what has been found been harmed by those who have appropriated what was available? In some cases, clearly not. Someone who does not need the new property and had no interest in making any effort to claim it would not be harmed by someone else acquiring it. Such a person might even benefit from the activities of those who put the new property to work. Nozick argues that a system of private ownership is

much more productive and efficient than its socialist alternatives, so that those late to the table benefit from private acquisition by others. In this way, he suggests, the intent behind the Lockean Proviso may be at least partly satisfied in a world of finite resources (ASU 177). As we shall see, Narveson does not believe everything should be privately owned, though he wishes to take privatization further than is now generally the case.

Does it harm you if someone appropriates the very thing you wanted? Perhaps not unless further conditions obtain, e.g. you were forced to stake everything on acquiring new land and someone destroyed your hopes. Or perhaps some vital activity of yours was interrupted or forestalled, e.g. someone reaches the last bit of water in the desert and appropriates it ahead of fellow explorers so that they have nothing to drink (cf. ASU 179). Similarly, one would harm others by appropriating the air they will need to breathe in the future.

Even if others are not harmed, the original acquisition of property raises an interesting question for libertarians. Is anyone *interfered with* in the claiming of property? If so, there could be a violation of the Liberty Principle, though initial acquisition may still not be completely ruled out if there is a conflict of interferences. In certain instances the answer to the interference question is 'Yes'. Suppose we have two individuals considering two pieces of unclaimed land. If one piece of land is superior and preferred by both then whoever acquires it will have interfered with the liberty of the other. This follows from the characterization of liberty and interference that was sketched earlier.

In a situation where two parties are interfering with each other, how can the impasse be broken? The Principle of Liberty does not tell us. This is to repeat that the Principle is not very useful, taken by itself: it needs to be supplemented by something else. A publicly controlled lottery, a "first past the finish line" policy à la Narveson, a custom of granting precedence to

those who are older, a system of government administration for the general well being are alternative ways of assigning initial property rights.

What is being stressed is that Narveson's doctrine of property rights, including his preferred account of original acquisition, is not an inevitable consequence of the Principle of Liberty. As he himself observes, it is important not to confuse the question of property rights with the question of liberty (cf. TLI 84). The fact that person A is already in a certain place farming does not entail that A is not interfering with B's liberty by preventing B from taking over the vinyard. Whether or not we grant that something is A's property we have not shown that A is not interfering with the liberty of others in keeping it to himself. He may well be interfering.

A libertarian state in which the public or a sovereign or an oligarchy owned quite a lot of things--all the land, for example--is conceivable. We couldn't have a libertarian state in which the government owned peoples' bodies; but it is not clear how far this gets us, since people need a variety of things in order to keep their bodies in a living and healthy condition. Freedom of discussion may not mean much in practise if the government owns all the newspapers, broadcasting equipment and telephone lines.

This suggests a further point, namely that the form of libertarianism which we are discussing is not primarily concerned with promoting liberty at all. Rather, it is primarily concerned with securing property rights, and property rights assigned in a certain way at that. Only secondarily or accidentally is liberty being furthered. Arguably, the word 'libertarianism' is not even the most appropriate name for a philosophy which does not try to maximize liberty but rather treats property rights as fundamental. We continue to use the word here by way of concession to established usage and recognizing that the kind of libertarianism under consideration guarantees the *pro tanto* freedom to treat one's own body and (other) property as

one pleases. Other things being equal, people with more property tend to have more freedom on this view, as they do in real life. A view which advocated maximizing liberty, in the present sense of being able to do what one wants, would be a quite different view--a kind of utilitarianism. A suitable replacement for the Liberty Principle on the present view would be: "People may do whatever they want, so long as they do not interfere with the property of others. People may not do what they like with the property of others unless given permission by the owner. There must be no violation of property except to prevent the violation of property." Let us call this the Property Principle.

To sum up, the Principle of Liberty is not as helpful as it first appeared to be, since people are constantly interfering with each other. The Property Principle, supplemented by a theory of acquisition, retribution and compensation, permits the resolution of more disputes. As Narveson suggests, the Liberty Principle is a special case of the Property Principle if we assume that the bodies of individuals are their own property. The Principle of Property allows the Liberty Principle, which by itself often leads to gridlock, to be applied more readily in human affairs.

SOME CONTROVERSIES

Rather than trying to spell out in further detail the nature and origin of property rights, let us turn to consider some policies which private property style libertarians want to defend in practise. As was suggested above, freedom from state coercion is high on the list of priorities for most libertarians. Narveson's view is typical: he thinks that practically everything done by modern governments is coercive and violates someone or others' rights (TLI 334). According to both Nozick and Narveson, a state must not be in the business of forcing people to aid others, nor of protecting people from themselves. A state ought not to proscribe private activity of any kind,

such as religious worship or voluntary sexual behavior, nor should it select certain forms of art for public support.

One example of a controversial issue on which libertarianism has a bearing is euthanasia. Adults who make a deliberate, settled and uncoerced decision to kill themselves may not be kept from doing so on the Liberty Principle, nor may they be prevented from enlisting the help of others in carrying out their wish. This is a significant departure from early 21st century public policy in North America and most of Europe. Current U.S. law also forbids any selling of human organs, including one's own. Such a prohibition is incompatible with libertarian principles, since libertarians say that people should be permitted to do as they wish with their own bodies. Provided that all the parties to a commercial transaction give their free and informed consent there can be no objection to its taking place. There may be some dispute over what constitutes a settled or well-informed decision and how to treat cases in which the party is not *compos mentis*. However, to libertarians there will still be a large set of cases to which the answer is reasonably straightforward.

A traditional rallying point for libertarians is freedom of speech. Various controversies fall under this heading, including debates over pornography and obscenity, libel and slander, hate speech and incitements to violence, threatening state security by telling secrets or advocating subversion, and so on. Mill devotes an eloquent chapter in his *On Liberty* to the freedom of thought and discussion. His defense is utilitarian: individuals and society benefit overall from a fairly broad tolerance of dissident views and alternative lifestyles. As mentioned earlier, for the property theorist, property rights have a bearing on at least some of these matters. Obscenity in one's own room, out of sight and earshot of anyone else, will not be of concern to property-respecting libertarians. Conspiring to kill someone, or egging on a mob when there is a clear and

present danger of rioting, on the other hand, may well count as crimes against liberty or property. The difficult cases lie between such extremes.

To repeat an earlier complaint, the idea that one can do what one likes insofar as it doesn't affect others doesn't settle these disputes, because others are affected by almost everything one does. Even the knowledge that other people are behaving in a certain way is deeply troubling to some people, and to this extent they can be said to be affected. Indeed, if no one else were affected at all, no one else would care about the activity, and it would not be controversial. The acts that libertarians are much concerned to protect do not, therefore, fall into this category of activities affecting no one else. This is a good reason for restricting the effects warranting intervention to physical harms. Counting hurt feelings and outraged sensibilities would make the most sensitive the arbiters of what can be said. Here is an example from this morning's newspaper. An archbishop from Costa Rica is quoted inveighing against a rival sect which has been proselytizing in his territory: "One thing is freedom of religion and the other freedom to insult". He feels insulted, it seems, on behalf of the Creator.

In the case of pornography, some persons may resent the availability of the material even if they do not avail themselves of it. A common complaint by parents is that they do not wish their children to have the opportunity to view pornographic images. And no doubt some people are worried that they themselves might be tempted to some self indulgence if presented with the opportunity. It is further plausibly suspected that viewing certain types of pornography can predispose certain folk to commit sex crimes, such as pedophilic acts. Granting all of these points, what follows from the property-respecting form of libertarianism which we are discussing?

No clear consequence follows, unfortunately, in part because the Principles we have been considering do not dictate any way to assign responsibility for harms. Suppose the probability of any given pornographer, rabble rouser or comic book merchant being a cause of crime is small but greater than 0, relative to the best information available. Are such people obliged to stop their activities? Perhaps not; but what if the probability is high? The Liberty Principle, by itself or supplemented with property rights, doesn't tell us. Narveson suggests that the public owes compensation to those (such as innocent drunk drivers) who have not caused any harm but have been inconvenienced by public safety programs (TLI 294). This, however, seems impractical in many instances. If I enjoy some activity that puts others at significant risk, should I be compensated by them if they prevent me from doing so? Not necessarily, but maybe in some cases, if the enjoyment is great and the risk is small.

In fact, even so flagrant a violation of justice as preventive incarceration is not ruled out by the property-respecting form of liberty set out in this paper--provided that crimes are forestalled. But how many crimes must be prevented, and at what risk of imprisoning innocent people? There are many other examples showing the limits of libertarianism in solving political/social disputes. Suppose some citizens of a municipality want to establish a waste disposal site which accepts garbage from other communities. On the theory under consideration, the decision is a matter of respecting property rights. Those who own property can do as they please with it, provided they respect the property rights of others. In practise, though, it is unclear what this entails. Presumably someone whose well will be poisoned and whose view will be spoiled has some say in the matter. But what does this amount to? An absolute veto? Compensation? Many people in the community will be affected in some way or another. Because of the diffuse and unknowable effects of pollution, sometimes spread over generations,

individual compensation is in many instances impossible. Yet to give each person an absolute veto over change will mean paralysis. Majority rule with some respect for the most adversely affected individuals is a practical alternative. Neither Liberty Principle nor Property Principle generate an answer to questions of how much compensation or punishment is appropriate for such violations. Some knowledge of justice must exist independently of these principles.

Still other examples are close at hand. Suppose someone spreads manure on his garden in order to fertilize it. This makes a smell which offends the neighbors. How bad must the smell be before it is reasonable for them to complain? Here, one might say, there is room for negotiation. Yet it is not merely a matter of negotiation, trying to get the best bargain possible, but also of determining what it is reasonable to put up with. Or take the case of speed limits. One might suppose that in a libertarian paradise people get to drive just as fast as they like. But is this so? It seems likely that removing all speed limits, even if only on major highways, will result in some increase in fatalities due to traffic accidents.³ If so, the risk to all would to some extent increase, and some drivers might prefer not to accept this heightened danger to themselves. It is hard to see why, on libertarian grounds, they should have to put up with a higher risk of being mangled if they wish to drive. Many disagreements will turn on what the proximate effects of a policy will be, as we can speculate for instance that a brisk street trade in grenade launchers and anti-aircraft missiles will have inconvenient consequences down the road.

Prohibiting private arsenals, then, might be justified. And perhaps speed limits. But what speed limits? It seems pretty clear that we won't be able to deduce them from first principles;

³ There is some controversy about the effects of speed limits on traffic fatalities. For a discussion about the results of imposing lower speed limits in the U.S. in the middle 1970's, see "Born Free" by Louis Menand, a review of Charles Murray's What It Means to Be a Libertarian (in The New York Review of Books, Feb. 20, 1997). The present discussion presupposes that highways are in some way under public jurisdiction. If they were privately owned, then the owners could perhaps set whatever speed limits they chose.

what people will reasonably accept is in part a matter of what they are accustomed to and what fits well into the lives that they now lead. This shows again that in some issues libertarianism needs to be supplemented by other principles, in spite of putting forward an apparently clear and simple criterion. (In fact, cars being the dangerous and--to some--obnoxious contrivances that they are, it is not obvious how their widespread unrestricted use can be justified on libertarian grounds. Nowadays they are such a part of most Western lives that it is hard to imagine doing without them; but this is the result of historical accident rather than principled decision-making.)

How do people actually go about reasoning in such cases? Before accusing the manure spreader, for instance, of being a bad neighbor they may ask such things as "Have I done something which leaves me open to the same criticism?" "How does this situation resemble past precedents?", "What would I do in the manure disturber's position?", "What would others do in my position?", "Are more people likely to start doing the same thing if this act goes unremarked on, and what if they do?", "Is it worth damaging my relationship with the offender?", and so on. In short, they use various rules of thumb, including the Liberty Principle, to decide on a moderate and appropriate response.

LIBERTY AND PUBLIC BENEFIT

We see then that libertarianism of a property respecting type leaves many questions open because of the various ways in which liberty or property rights can clash. Another issue appears when we consider whether individual liberties can be overridden for the sake of the general welfare. Libertarians sometimes argue that a respect for individual freedoms yields more efficient results and contributes best to the public welfare, at least over the long run. No doubt

this is often true, but it is by no means necessarily so. The question then arises as to whether liberties may ever be disregarded to secure some benefit.

The writings of Nozick, an influential ex-libertarian, have sometimes suggested that no public benefit, however great, should outweigh even the slightest violation of individual liberty. This is reminiscent of the early Chinese Daoist Young Chu, who reputedly declined to pluck out a single hair even if he could thereby save the whole world. Of course in the present case we are talking about the plucking of someone else's hair, but does it follow from libertarianism that forcing someone to pluck out a hair is impermissible, even if an enormous benefit would thereby accrue to others? The example is preposterous, but the issue is not. In *Anarchy, State, and Utopia*, Nozick says only that he hopes to avoid discussing extreme cases of public goods and individual rights (ASU 30). I submit that any view this fastidious about liberty will not be entertained for very long by people of good sense. Famines or other disasters provide plenty of real life examples of desperate situations where some central control may be necessary. As Narveson sensibly observes, no system of ethics is satisfactory which entails that it is OK for there to be lots more hungry, sick and miserable people around (RF 68).

A more ordinary instance of liberty sacrificed for the public weal is provided by taxes. Consider private economic activity, or capitalist acts between consenting adults, as Nozick says. The libertarian idea entails that an economic transaction which is knowingly entered into by agents of their own accord, and which violates the freedom of no one else, may not be hindered or prevented. As things stand, however, nearly all economic activity is hindered by taxation. Taxation is a form of state coercion. Taxes are collected by various levels of government with or without the consent of individuals who pay, and put to uses which individual taxpayers may or may not approve of: military defense, road maintenance and state education systems, public

health care, foreign aid, symphony orchestras, sports stadiums and social security, to name a few common examples. Libertarians are united in claiming that taxation can be defended, if at all, only in much more attenuated form than now exists in Europe and North America.

There is indeed a real question as to whether any taxes at all can be justified on strict libertarian principles. Taxation separates people involuntarily from their property, and according to libertarianism one's negative rights to do as one chooses with one's property include the right to keep it away from the taxman if one so desires. How then might a libertarian justify taxation? Mill can do it by invoking the principle of utility, but how can non-utilitarian proponents of liberty do it?

In *Anarchy, State, and Utopia*, Robert Nozick argues at length that a minimal, or night-watchman type, state is justified: one which takes wealth from its members for the purpose of protecting them from predators (cf. TLI 190). The basic idea is that protection agencies will be required and these will naturally come to be incorporated into a single dominant agency which everyone will be forced to deal with. Nozick claims that this agency's de facto monopoly on power and its adjudication of disputes make it a "statelike entity" (ASU 113) and that it can arise without violating libertarian strictures. He goes on to defend the view that this minimal state is also the most extensive that can be justified.⁴

Narveson, who starts from somewhat different premises, diverges from Nozick in this respect. As was mentioned, he attempts to derive the main principles of morals from general considerations about rational contracts. Reflecting on which state operations might be a good

⁴ For some criticisms, see TLI 217ff. Narveson replies that if Nozick's argument works, it works for public commodities other than protection. All that must be the case is that some association comes close to having a legitimate monopoly over the powers that states claim to have, and that the remaining holdouts can be compensated in some way so as to make the monopoly complete. Telephone, power and gas services are listed by Narveson as other public commodities which could be legitimately run by the state on Nozick's principles. Narveson also points out that Nozick's argument leads to an organization very unlike modern states in that everyone within it can withdraw at any time. In this sense it has no right to compel its citizens to obey its laws.

deal for citizens, he reckons that some further state activity may be occasionally in order. His reasoning is that we may all be better off, more or less, if the state provides certain goods using public money. Among the state activities in question are insurance schemes such as health care plans. Narveson's argument is not that sick or needy individuals have a (positive) right to be supported by others, nor that supporting the sick and needy is an appropriate act of benevolence by elected officials on behalf of the citizenry. Rather, he believes that in practice considerations of efficiency may make it rational for nearly everyone to subscribe to certain insurance schemes (cf. ASU 113). Ideally, those who aren't interested should have the right to opt out, but if enough people are willing to join and the rest are not unduly harmed the state could administer the program and the holdouts might be compelled to go along.

Times of genuine national emergency could occasion other legitimate state compulsion, as when citizens must defend themselves to avoid enslavement at the hands of some enemy. Even conscription, therefore, may in some cases be justified, according to Narveson. What must be the case is that the unwilling contributors are no worse off than they would otherwise be: the worst off beneficiaries must receive more benefit than they lose due to the compulsion (TLI 233; cf. 261). Also, practical considerations might make it impossible to consult everyone on every occasion to get universal agreement before acting.

Strict libertarianism has been abandoned by this point. Presumably, the judge of an individual's benefit must be himself, so how could a pure libertarian justify conscripting anyone? How can any such violation of freedom, however small, be justified? Narveson's justification does so by appealing to rationality and the original contract. By going back to the original ground for libertarianism (as he sees it), he makes room for occasional violations of liberty for the sake of some other goal. Thus, contractarian considerations are called on to justify exceptions

to the Liberty Principle. Whether this is a successful strategy is a matter for future discussion, as it raises complicated problems in the foundations of ethics and rational choice theory.

It was earlier pointed out that property-respecting libertarianism is consistent with a situation in which there is very little private ownership. On Narveson's view private ownership is in order in instances--such as that of our own bodies--where individuals have a strong interest in excluding access by others. However, where a need for public access is great and the interest in excluding others is small--as in the case of highways, for example--public ownership is a reasonable route to take (TLI 301). Narveson thus seeks a middle way between total government control of property, say by a Hobbesian sovereign power, and total private control. Reflection on the fact that actions commonly affect other people in some way leads to mechanisms for public input into many decisions about one's property. The zoning restrictions that result might be rather similar to those which are currently in place in many municipalities (TLI 306).

HOW MUCH FREEDOM IS ENOUGH?

A helpful question to ask about libertarians is this: what virtue are they in pursuit of? I think the answer is, that they are elevating the virtue of appropriate tolerance. Moreover, they offer a principle or criterion for determining which uses of authority or power are to be praised for a sufficiency of tolerance. Uses of power or authority are excessive which infringe on an agent's freedom. Uses of power or authority are insufficient which permit violations of freedom to occur. A suitably tolerant authority both refrains from interfering needlessly with freedom and prevents others from doing so. Libertarianism, then, tries to escape the opposite vices of authoritarianism, tyranny or intolerance, on the one hand, and a kind of laxity or lawlessness on the other. Observing negative liberties is held to be a standard for avoiding both vices.

As has been argued above, libertarianism fails to yield the clear and simple solutions that one might have hoped for in many current disputes. Why did it seem so promising to begin with? In part, no doubt, because we all have a more or less finely tuned sense of what counts as a normal and undisturbed state of affairs, and an idea of business such that we know when someone is not minding his or her own. However, it seems unlikely that this is a pre-moral sense or that it can be made general and precise enough to serve as the foundation for a political philosophy. We still need to know how property rights are assigned and compensated for and under what circumstances they may be overridden. It is possible that there is no simple criterion which will tell us.

If the Liberty Principle is not an complete guide to public policy, it is still less suited to be the sole fundamental principle of morals. We can see this by means of a stock example mentioned by the Chinese philosopher Mencius: suppose someone strolling past a well suddenly sees a young child who has slipped and is in danger of falling in. And suppose the passerby would not find it difficult to rescue the child, but that if nothing is done the youngster will almost likely die. Readers will probably agree that to save the child would be to practise some moral virtue--say, the virtue of humanity--while to walk on by or to stand idly and watch the child fall would be to reveal a degree of callousness. As Mencius observes, an ordinary passerby would probably act instinctively out of compassion, not because he wanted to get a reward from the parents, win praise or avoid a bad reputation.

The Principle of Liberty, however, does not tell the passerby to rescue the child. It merely forbids anyone from forcing another person into the well. Since it does not forbid us to ignore the falling victim or to take pleasure in the child's misfortune it cannot be a complete guide to what is morally praiseworthy in action.

Again, consider a slothful person or a fool whose foolishness takes the form of improvidence. These vices are moral failings: that is, laziness and improvidence are character flaws for which people are blamed. However, one could be too averse to work or inclined to spend too freely without necessarily violating the Principle of Liberty. Thus the Principle does not rule out every instance of moral vice.

Narveson is prepared to grant that diligence, prudence, benevolence and so on have to do with personal values and general judgements about what makes one's life a good one (RF 59-62). But at times he wants to restrict the province of morality proper to rules which should be publically enforced by legal or (mainly) by informal, verbal means. Morality enters in when there is social interaction, and concerns behavior which may be constrained by others (TLI 123ff). Correspondingly, Narveson distinguishes a wide and a narrow sense of 'immoral'. While lazy, foolish or selfish behavior may be regrettable or immoral in the broad sense, it is not by itself sufficient cause for intervention. If someone is lazy or improvident that may in some sense be his own affair, according to Narveson. Similarly, we cannot force someone to stop and help another person, though we do have grounds to prosecute if someone commits murder or assault.

Disapproval is appropriate to vice. Should we count scolding, shunning and picketing as cases of force, to be ruled out by the Liberty Principle? What about "those injurious looks which cannot fail to be offensive", as Pericles put it? Mill recognizes that the moral coercion of public opinion is among the most common and effective means of producing conformity. To allow public expression of disapproval would be to deprive the Principle of much of its bite; to forbid it always would itself be a violation of freedom. On any moral theory it is difficult to give a general rule about how free we should be to shout, prod, glare, natter and nag at those who are immoral in Narveson's "wider sense of morals" (cf. TLI 125).

Narveson does not want to count one's judgment of what makes life good a part of morals proper because, he says, we would then get the result that whenever our personal values differ, our morals also differ (RF 61). And this, he thinks, is likely to lead to paternalism, in the sense of people trying to foist onto others some idea of the good that is foreign to them. Since we differ about what is good, we need some way to avoid this sort of paternalism. He says sharply, "An agreement to keep off each other's backs will do the trick; fancy talk about The Good will not" (RF 61).

It is true that, as a practical matter, things often work better when we don't try to force agreement and conformity. People need enough freedom to flourish, and there are many ways to flourish, though--to lapse for a moment into fancy talk--the best life for at least most human beings involves a development of talents, some cultivation of interpersonal relationships, and a contemplation of what is beautiful and sublime. Even if people often fail to find the means to achieve their highest good, forcing them to change their ways is often counterproductive. As a necessary compromise, those who think they know better often have to refrain from trying to extirpate moral error in others, not because people have an inalienable right to believe falsehoods and behave stupidly, but because it sets a bad precedent for everyone in the long run. Would-be moral reformers, and even libertarians, have to bear in mind that they may be mistaken.

Of course, moral theorizing isn't very effective at changing people's habits, especially after a certain age. Nor can one normally expect to change the attitudes of others about basic goods, or about anything much at all where vested emotional interests are involved. But we can't, even if we want to, keep off everyone's back, in the sense of not interfering with anybody else. The Liberty Principle and the Property Principle have to be supplemented and occasionally overridden. Liberty itself is not a virtue and can be evaluated as being deficient, sufficient or

excessive for the goals of a good life. More and more freedom is not always better and better, even for the minority of people who have unusually independent dispositions.

This is not to deny that extensive liberty is a most precious thing, or to belittle the sacrifices of those who have struggled against tyrants to win proper freedom. Our tremendous economic and scientific advances, our relative emancipation from superstition and tyranny, our ability to think and speak without fear about gods and rulers owes much to these heroes and martyrs. Most of us, even the dull and incurious, are far better off in ordinary times under conditions where citizens are free to examine and pursue their own peaceable forms of life. Such freedom is a treasure to be guarded most jealously. These lines were written a few tens of kilometers from North Korea, a country where the government publishes lies and severely punishes those who question them. The imprisoned and suffering citizens of the DPRK do not have any excess of freedom.

Libertarianism has a salutary influence in shifting the burden of justification onto those who choose to prevent people from doing what they please. It is a bold attempt to systematize public policy and make it rational by providing a single criterion for distinguishing acceptable from unacceptable acts. But the Liberty Principle alone is inadequate to do this job--certainly for morals in general, and even within the more restricted sphere of public policy.⁵

⁵ I am grateful to Jan Narveson for comments on an earlier version of this paper.