THE LIMITS TO INDIVIDUAL FREEDOM:
WHY THE PRINCIPLE OF RIGHTS IS BETTER THAN THOSE OF HARM, COST, PARETO OR COERCION

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INTRODUCTION

Libertarians believe in freedom of the individual. However, they also recognise that this cannot mean that everyone should be free to do whatever he/she pleases no matter what the consequences may be for other people. A line has to be drawn somewhere, otherwise the freedom of one person will be inconsistent with the freedom of others. The question is: where should that line be drawn? Or better: according to what principle should that line be drawn?

I will begin by considering three principles for drawing the line which are commonly put forward. I would guess that every libertarian has invoked one or more of these principles at one time or another (I know I have). And they are indeed very serviceable, since there are many contexts in which one or other of these principles will seem to deliver the right answer. However, as I will show with a series of counter-examples, there are plenty of ordinary contexts in which people are acting unimpeachably from a libertarian point of view but are nevertheless transgressing some or all of the principles.

The three principles are, then, at best only rules of thumb which stand as a proxy for the true principle which applies to all situations. I will suggest what this true principle is, show how it accommodates all the counter-examples to the other three principles, and explore its content in a little detail. I will then discuss and dismiss a fifth principle that is sometimes proposed by libertarians before briefly considering the question of risk. Finally I will consider an objection to my whole approach.

THREE PRINCIPLES FOR LIMITING INDIVIDUAL FREEDOM

There are three principles that one often hears put forward as defining the limits to liberty.

(a) The harm principle: people should be free to do whatever they want so long as they do not harm anyone else.

(b) The cost principle: people should be free to do whatever they want so long as they do not impose costs upon anyone else.

(c) The Pareto principle: people should be free to do whatever increases the utility of at least one individual without reducing the utility of any others.

I will now set out a number of counter-examples to each of these principles. Each of the following examples is a case of action which libertarians (and almost everyone else) would regard as perfectly legitimate but which conflicts with one or more of the three principles.

AGREEMENTS

I decide I need some plastic surgery. I find a surgeon who agrees to perform the operation and we agree on a price. The operation goes ahead, I am happy with the result and I pay his bill. The surgeon has inflicted harm upon me: e.g. he may have broken my nose, shaved bits off it, cut into my flesh, and left me for a week or so with two black eyes, aches and pains, and with bandages around my head. He has also imposed costs upon me, in the form of his bill.

This case does not violate the Pareto principle since, despite the suffering and the cost, I am happy with the result (so my utility is increased). It might therefore be argued that the weakness of the first two principles is that they specify adverse consequences in terms that are too specific (harms, costs) instead of using the more general and abstract notion of a decrease in utility. For, it may be said, harms and costs typically come as part of a package, and the harms or costs will be acceptable provided they are outweighed by concomitant benefits. The Pareto principle is, then, a more sophisticated version of the harm and cost principles.

However, the following slightly different example will show a weakness of the Pareto principle. It will also suggest how the Pareto principle can be modified to overcome the weakness. And it will be evident, too, that the same modification can also be applied to the harm and cost principles to get around the counter-example above.
I decide I want a skinhead haircut (I have never had one before). I find a barber prepared to do the job, and I agree to pay his price. He makes a nice job of it. When I see the result I am appalled: I never realised I would look like that! Still, he has done what I asked him to do, so I pay the bill. The barber’s utility has increased; mine has definitely diminished. But the actions involved were all perfectly legitimate: I just tried an experiment that did not work out.

The Pareto principle can easily be amended to cover such cases by incorporating the notion of consent. The barber is blameless, despite decreasing my utility, because I consented to his action. The same can be said in relation to the harm and cost inflicted by the surgeon in the first counter-example. We thus arrive at the modified principles: people should be free to do as they please so long as they do not

(a) harm others
(b) impose costs upon others
(c) decrease the utility of others

without the consent of those others. However, there are still plenty of counter-examples to these principles even as modified.1

CRIMINALS

Someone throws a brick through my window and runs off. I give chase, eventually catch up with him and rugby-tackle him to the ground, inadvertently cracking his head on the pavement in the process. I press charges and he ends up (some considerable time later) having to pay me compensation. I have harmed him, imposed costs on him and decreased his utility, all without his consent; yet I was perfectly entitled to act as I did.

ASPECTS OF COMPETITION

Alf wants to take Betty to the ball. Bert wants to take Betty to the ball. Betty wants to go to the ball and would be happy to go with either Alf or Bert. Alf knows Betty is interested, so he has a bet with his friend Clive that he takes Betty to the ball. However, while Alf is dithering, trying to muster the courage to ask Betty to go to the ball with him, the more enterprising Bert invites Betty to the ball, and Betty happily accepts the invitation. When Bert and Betty go to the ball, they are acting freely, and there is no reason to curtail this exercise of their liberty. Yet their action harms Alf who is now very upset that he has missed his opportunity to take Betty to the ball. Their action also imposes costs on Alf, since he has now lost his bet with his friend Clive. And although Bert and Betty have increased their own (and Clive’s) utility, they have definitely decreased Alf’s; and all without Alf’s consent.

There is a local handyman I pay to do odd jobs about the house. He is a chatty old chap and I always entertain him with tea and biscuits and conversation when he is on the premises. However, I have been making enquiries with other workmen, some of whom offer much better value for money. As money has been tight lately, I decide to opt for one of the more competitive rivals. As a result, the old handyman suffers harm (he misses the conviviality), costs (he suffers a loss of income) and a decrease in utility (for both reasons), and all without his consent. But I am (and should be) at liberty to act in this way.

I remember a pop song which had the refrain “video killed the radio star”. Before the advent of video, the radio star would have had fame and fortune. Then televisions come on to the market and within a short space of time the radio star is joining the dole queue. The inventors and businessmen who brought us video, for which we are thankful, therefore imposed on the radio star harms (loss of fame, prestige, self-esteem, etc.), costs (loss of that fat income) and thus a decrease in utility. And they did this without the radio star’s consent. The same applies to other innovations: they are to be welcomed as bringing us benefits, and people should certainly be free — and be encouraged — to innovate, yet they impose costs, harms and decreases in utility on those people in the outmoded industries.

When Terry left the office, he forgot to make an important telephone call. He does not have a mobile. The woman he needs to call will be leaving her office in a few minutes. Terry needs to find a public call box fast, otherwise he will lose his bonus and get a ticking-off from his boss (which will be psychologically very painful for him). He knows there is only one call-box in the vicinity, so he races to its location. I am dashing for a train, but I need to tell the person I am meeting at the other end which train I will be on. I spot the call box and it is free; but I also spot Terry rushing towards it. I beat him to it, make my call and just catch my train. Terry has had to wait a few minutes for me to make my call. He dials his number, but she is not there. By beating Terry to the call box, I harm him, impose costs on him and decrease his utility, all without his consent. But there was nothing wrong with what I did; I just beat him to it.

EXTERNALITIES

The four examples of competition just given involved third-party harms, costs, or decreases of utility, i.e. “externalities”. Thus, Betty and Bert, or a tradesman and I, or the video suppliers and their customers, or I, decide to do something that has adverse consequences on someone else (Alf, the old handyman, the radio star, Terry). Consider now a couple of somewhat different kinds of externalities.

I paint the outside of my house purple. My neighbours, let us suppose, are not bothered by this (they just regard it as another one of my eccentricities). However, one man who waits outside my house for a bus to take him to work has an intense loathing of that particular shade of purple: even a glimpse of it gives him a migraine. He does not have to go to work by bus. Instead, he could avoid seeing my house by going to the station and getting the train; but that will cost him more. So I am either
causing him harm, or I am imposing costs on him. Either way I am decreasing his utility. And I am doing this without his consent. Yet I am perfectly within my rights to do as I have done.

Hooter the clown puts on a show for the kids every Christmas in a local hall. He has been doing this for years and it normally makes him enough money to cover the costs of his Christmas shopping. The kids really enjoy the show and so do their parents (they enjoy their kids’ enjoyment). However, Hooter feels that he has had enough, so he decides to retire. The kids and their parents are very upset: they were all so looking forward to seeing the show again this year, and next year, and so on. The parents will also be out of pocket since they will have to take the kids to some other show, but all the other shows cost a lot more than Hooter’s did. Of course, Hooter is perfectly entitled to retire, despite the fact that his decision causes many people harm (those who are upset) and imposes costs on many (the parents who have to fork out more for alternative entertainment for their kids), therefore decreasing the utility of many, and doing so without their consent.

RIGHTS

We have considered three principles for drawing the limits to individual freedom, viz., the cost, harm and Pareto principles. But it can be seen from our set of counter-examples that they all get it wrong. What our counter-examples show is that there are many very ordinary situations in which a person harms, imposes costs on, or decreases the utility of someone else, without that someone else’s consent, but where the person acting is perfectly entitled to act in the way he/she does.

Of course, there are other kinds of instance in which it is wrong to impose harms, costs or decreases of utility on other people without their consent (recall the git who threw a brick through my window). But, then, what is the principle for distinguishing the two types of case? When am I free to impose harms, costs or decreases of utility on someone else (without his/her consent) and when am I not so free? What is the principle for drawing the limits to individual freedom?

The principle to which I subscribe is the rights principle:

People should be free to do whatever they want so long as they do not violate the rights of anyone else.

In all our counter-examples, the parties who suffered harms, costs or decreases in utility did not suffer any violation of their rights. That is why the agents who imposed the adverse consequences were entitled to do what they did. Let us quickly run through the cases.

When Bert propositioned Betty, he deprived Alf of an opportunity, but he did not trample on any of Alf’s rights. Alf did not have a right to take Betty to the ball. Similarly, the local handyman does not have a right to work on my house (I can engage who I want); the radio star did not have a right to a future income from his fans (anyone is at liberty to propose to them a better way of spending their money); Terry did not have a right to use the public call-box (he and I were both at liberty to use it, but I beat him to it); Mr. Migraine did not have a right to avoid seeing purple on his way to work; and Hooter’s fans did not have a right to see him perform year after year (though they would have had if Hooter had signed a long-term contract with them to that effect).

A couple of points ought to be noted here. First, there is a distinction between rights and liberties. If I have a right to do something, then everyone else has a duty to let me do it (if I want to do it). Now, if I have a right to do something, then I also have a liberty to do it; but I can have a liberty to do something without having a right to do it. This will be so if doing that thing does not violate the rights of anyone else. So there are things I have rights to do (and which everyone else has a duty to let me do); and there are things that I have a duty not to do, because they violate the rights of others; and in between there are things which I am at liberty to do but which I do not have a right to do (other people may be at liberty to prevent me from doing them). Therefore, quite apart from the things that I have rights to do, I am also at liberty to do a great many other things. In fact, I am at liberty to do anything so long as it does not violate the rights of anyone else. The rights principle does not mark out the limits of our rights; it marks out the limits of our liberties (the scope of our legitimate freedom).

The second point to note is that the rights principle does not need to refer explicitly to the notion of consent, so it avoids the circumlocution of the first three principles. It is not necessary to say that one should not violate people’s rights without their consent. For if consent is given, then there is no violation of rights. However, this simplification is merely an artefact of the language used: it does not show that the rights principle is conceptually simpler than the earlier three principles.

But what now of criminals? Normally, if I wrestle some man to the ground, inadvertently crack his head on the pavement, and compel him to pay for repair to my window, I would be violating his rights. I did this to the git who threw a brick through my window but I was entitled to do it. But according to the rights principle, I am not entitled to violate anyone’s rights. So is this a counter-example to the rights principle?

It is not a counter-example to the rights principle, for the following reason. By throwing a brick through my window, that git violated my rights. He therefore forfeited his own rights to some extent. My actions of catching him and handing him over to the law-enforcement agencies would have been a violation of his rights if he had not already violated mine. But because he violated my rights, he lost some of his own; and that left me at liberty to inflict on him actions which I could not legitimately have inflicted on other people.

The extent to which a rights-violator forfeits his/her own rights depends on the seriousness of the rights violation that he/she has perpetrated. The restraint, minor physical injuries and costs that I imposed on the brick-thrower were legitimate in view of his action. But it would not
have been legitimate for me to chase after him with my baseball bat and then bludgeon him into oblivion when I caught up with him. That would have been quite out of proportion to the violation he inflicted on me.

**WHAT ARE OUR RIGHTS?**

Ultimately, we have only one right, viz., the right to use our private property as we please. My right to use my private property as I like implies a duty on all others to leave me to do so. It also implies a duty on me to respect the corresponding rights of other people. This means that in exercising my right, I have to be careful not to violate the rights of others. Thus, a person’s ultimate right can be spelt out as: the right to use his/her private property in any way he/she pleases provided he/she does not violate the right of anyone else to do the same.

I said that *ultimately* we each have only one right. The reason for the qualification is that the abstract right to use my private property becomes concrete in a set of more particular rights over specific pieces of property. The most important piece of property that I possess is my body. But I also own lots of other things. I have a whole set of property rights, and the elements of the set change over time. Thus if I buy a football, I buy the right to use it as my property (I gain a property right). But if I sell the football, I transfer my right to someone else (I part with one of my rights).

My right to use my private property can also give rise to me having rights to use other people’s private property, by mutual agreement. For example, if I rent a flat, I acquire the right to use someone else’s private property (the flat-owner’s). I acquire this right by exercising my right to use my money (part of my private property) in my own preferred way, in this instance, by giving some of it to the flat-owner in return for the use of his property. Similarly, the flat-owner is exercising his right over his private property in letting me use it in exchange for the cash.

There are three ways in which I can acquire rights to private property. First, my right to my body comes naturally: I have it as soon as I am old enough to have any rights. Second, I can acquire rights by agreement with others, through reciprocal exchanges or gifts. Third, I can take possession of unowned things. If something is unowned, then no-one has a right to it, so anyone is at liberty to take possession of it (though taking possession of it might have to be done in some conventional way for other people to recognise that it has occurred).

I have the right to use my private property as I like, but only to the extent that I do not violate anyone else’s private property rights. My liberty is therefore constrained by what other people decide to do. Recall again the case of Terry and I racing to the call-box. We each had the right to move our bodies in the direction of the call-box (using our private property in our preferred ways). Before either of us reached the call-box, neither of us had the right to use that telephone. The owner of the telephone used to have the right to use it. But he/she then made the ’phone available to people to use, on a first-come-first-served basis, which is why both Terry and I were at liberty to use it. I acquired the *right* to use the ’phone, and Terry temporarily lost his liberty to use it, when I beat Terry to the ’phone (so long as I intended to pay for a call). And even the owner of the call-box would have had to respect my right to use it once I had put my money in the machine.

Here’s another type of case. I buy a detached house in a remote location. One of the ways in which I exercise my rights over my bits of property is to play Megadeth loud, sometimes during the day and sometimes between 3.30 and 5.00 a.m. I am perfectly at liberty to do this since no-one else lives within earshot. But then some bookworm buys a neighbouring plot of land and builds his house right next door to mine. He likes his peace and quiet, so that he can read his books during the day and sleep soundly at night. If I am to enjoy my property in my preferred way, then he cannot enjoy his property in his preferred way, and vice versa. Clearly we have to come to some compromise, perhaps with him agreeing to put up with Megadeth during the daytimes and me disinguishing from playing it during the night. If we had been unable to settle this between ourselves, we could have gone to court; but a similar ruling would have been the likely upshot.

In this last example, if we had gone to court, what the court would have decided was who had the right to do what. It would have determined, say, that within limits I had the right to prevent my neighbour reading for part of the day by playing Megadeth loud, while my neighbour had the right to prevent me from playing Megadeth loud at night so that he could enjoy his sleep. My neighbour and I, let us suppose, were in agreement that we each had the right to use our private property as we pleased so long as it did not violate anyone else’s right to do the same. But we disagreed concerning what constituted a violation of each other’s rights. The job of the court was to settle the dispute by ascertaining where the boundaries of our rights and liberties lay.

When he moved next door to me, the bookworm certainly reduced my liberty. But he did not alter any of my rights. My rights were the same before as afterwards, viz., to use my private property without violating anyone else’s rights. It is just that, in moving next door to me (which he was perfectly at liberty to do), the bookworm put his rights in the way of my preferred behaviour. Because my liberty stops at other people’s rights, what I am free to do depends on what other people decide to do.

**THE REALITY OF SOCIAL COST**

It is sometimes said that defining private property rights in things eradicates externalities. It should be seen from our examples that this is not true. Allocation of private property rights determines who has the right to impose costs (or harms or adverse consequences) on others. I had the right to lower the utility of Mr Migraine by painting my house purple; Hooter had the right to impose costs, harms and disutilities on his fans by retiring.
Similarly, I had the right to inconvenience my bookworm neighbour by playing Megadeth in the afternoon; and he had the right to inconvenience me by prohibiting me from playing it during the early hours.

However, the freedom to trade private property rights allows people to re-allocate these rights in ways which are more productive. For example, Mr Migraine can offer to buy my right to paint my house purple, i.e. he can offer to pay me not to do it. Suppose that, in order to avoid the change to his routine and the additional costs of the train journey, he is willing to pay me £2 per week if I do not paint my house purple. If the £2 a week is worth more to me than the pleasure of living in a purple house then, in exchange for his money, I will sign away my right to paint my house purple. The same goes for the neighbour: we are at liberty to trade the rights to the use of his cottage for £30,000. Mr Migraine has the right to do as he pleases; but he may sell his right to impose externalities on others also have an incentive to take such additional costs into account when making my decision, i.e. to internalise the externalities.

Note that internalising the externalities does not mean that the externalities are eliminated. Mr Migraine bears the brunt of my purple fetish one way or the other (either because I paint my house purple or because he pays me to not to). What internalising the externalities means is that those who have the right to impose externalities on others also have an incentive to take those externalities into account in making their decision about whether to go ahead and impose the externalities. And they have an incentive to take them into account because third party costs are also first party costs wherever the right to impose costs can be traded.3

The two counter-examples I described as “externalities” were somewhat different to the cases of competition that I described previously. However, it should be noted that they were also aspects of competition. In the case of Hooter, there is competition over the use to be made of Hooter’s time and skills: Hooter wants to use them in his favoured way (gardening, playing golf, or whatever), while his fans want him to use them in clowning around. Hooter has the right to do as he pleases; but he may sell that right if his fans offer him enough. Similarly, Mr Migraine and I are in competition over how I should paint my house.

THREATS

The rights principle as stated so far seems just a little too simple, for it takes no account of threats. Consider the following example.

Frank offers you his cottage for £30,000. You take a look at the dilapidated domicile and decide that its market value is nearer £10,000, but you would not even pay that for it since you have no use for the place. Frank then makes it clear that if you do not accept his offer he will inflict some horrible form of mutilation upon your nearest and dearest. You correctly do not doubt his ability or willingness to carry out the threat. You do doubt the ability of the law enforcement agencies to prevent Frank from executing the threat. So you buy his cottage for £30,000.

What Frank did was wrong: he should not be at liberty to act in that way. But he did not actually violate anyone’s rights: he only threatened to do so. The rights principle has to be modified to rule out such threats:

People should be free to do whatever they want so long as they do not violate the rights of others or threaten to violate the rights of others.4

Notice that the harm, cost and Pareto principles would also need to be complicated in this way (if we had not already rejected them as faulty). They would just have ruled out different types of threats, viz., threats of harm, costs or disutility. But such rulings would have been plainly wrong. If I say to my handyman that, unless he drops his price I will contract instead with one of his competitors, I am threatening him with harm, costs and disutility if he does not do as I want. But I am perfectly entitled to issue such threats because, in issuing them, I am not threatening to violate anyone’s rights.

COERCION

A special kind of threat is the threat of physical force. It is this kind of threat that is embodied in another principle that is sometimes put forward to demarcate the bounds of individual freedom, viz., the coercion principle:

People should be free to do whatever they want so long as they do not coerce others, i.e. so long as they do not use or threaten physical force against others.

However, this principle — like the harm, cost and Pareto principles — is also wrong. For there are some kinds of physical force, and threats of physical force, which are perfectly legitimate. Recall the thug who threw a brick through my window. In wresting him to the ground and restraining him I was using physical force; but I was entitled to do so. Similarly, law enforcement agencies, or individuals, are behaving impeccably when they issue appropriate (i.e. commensurate) threats of physical force against prospective rights-violators.
There are also some kinds of non-coercive behaviour (i.e. behaviour which does not use or threaten physical force) which people should not be free to do (because they involve violations of rights). Consider just two examples. First, I am at a beer festival and, apart from drinking beer, I have also taken part in some raffles and competitions and have won a number of prizes (glasses, bottles of beer, bar towels and beer guides). I am carrying around this booty in a plastic bag which, as the evening wears on and as I get more and more drunk, I tend to leave unattended. An opportunist thief spots this and makes off with my bag when I am not looking. Second, I am worried that I may lose the keys to my house. I do not want to have to break in if that happens, so I give a spare set of keys to my neighbour to look after. However, while I am out at work, my neighbour takes the opportunity to open my door with the keys and snoop around my house, rifling through personal items, including the wide range of sado-masochistic accessories that I have previously been careful to keep from her view. The thief and the snooper are both doing something wrong. Both are violating my rights, the one by means of theft, the other by means of trespass. But neither is using or threatening physical force.

In consequence, coercion (the use or threat of physical force) does not accurately mark out the limits to individual liberty.

RISKS

Some actions, though they involve no violations of rights, may nevertheless involve a risk of violating someone’s rights. For example, my next-door neighbour may enjoy playing ball with his young son in his back garden. He is perfectly entitled to do this. But sometimes they kick the ball up pretty high, and there is a chance of it coming over my fence and into my garden. If it lands on my flowers, it would destroy them. So my neighbour the ball up pretty high, and there is a chance of it coming over my fence and into my garden. I am carrying around this booty in a plastic bag which, as the evening wears on and as I get more and more drunk, I tend to leave unattended. An opportunist thief spots this and makes off with my bag when I am not looking. Second, I am worried that I may lose the keys to my house. I do not want to have to break in if that happens, so I give a spare set of keys to my neighbour to look after. However, while I am out at work, my neighbour takes the opportunity to open my door with the keys and snoop around my house, rifling through personal items, including the wide range of sado-masochistic accessories that I have previously been careful to keep from her view. The thief and the snooper are both doing something wrong. Both are violating my rights, the one by means of theft, the other by means of trespass. But neither is using or threatening physical force.

What happens if the ball comes over and ruin my flowers? He has actually violated my rights (though not deliberately), so I am entitled to make him pay compensation. Will I do so? Probably not, for one or both of two types of reason. First, I could dismiss the damage of the general give-and-take: it may be that I engage in activities that expose him to minor risks and which sometimes eventuate in small damage to his property for which he does not claim compensation. Second, I could reason that the cost of the damage is rather small and would be outweighed by the costs of getting compensation. This would certainly be so if I had to take him to court; but before it got to that stage the loss of neighbourly goodwill might be sufficient to deter me from having it out with him. But if his destruction of my flowers became a regular occurrence, then I would indeed seek compensation; and the fact that I made him pay compensation might deter him from engaging in his ball-game in future (depending on how great a value he placed upon the game).

There are a great many actions that people perform, and that they are entitled to perform, even though they expose us to risks of having our rights violated. In some cases they even put our lives at risk; but people are entitled to do them because the risks are small and the benefits are worth it. For example, anyone who drives a motor vehicle puts at risk not only other motorists but also anyone who could be hit if control of the vehicle was lost. Anyone who flies in an aeroplane puts at risk not only his/her own life, but also the lives of others on the ground below. These risks sometimes come to fruition: many pedestrians are killed in car accidents; a large number of people have been killed by jumbo jets falling on them. For the victims the damage is catastrophic; but — until it happened — the risk of them suffering such damage was extremely small; and the benefits to everyone of motor and air travel are so large as to make these risks worth incurring.

The converse of this is that where the risks are great and the benefit small, people are not at liberty to expose others to risks of rights violations. A man might enjoy shooting off his gun randomly in all directions. In an open area with no other people around he may be at liberty to do this. But he is not at liberty to do it in a crowded shopping centre. There would be great risk of serious damage and the benefits would be insignificant by comparison.

Let me end by making four points. First, people are at liberty to perform an action that exposes others to risks of having their rights violated when the benefits of the action justify the risks. I have given some examples of risky actions that we clearly are, and others that we clearly are not, at liberty to perform. But, of course, there will also be some borderline and disputed cases. Second, I am not saying that we consent to the risks in the case of actions with sufficiently large benefits. We clearly do not consent to them. What I am saying is that, in such cases, the agents are at liberty to act as they do and to impose the risks upon us, and our consent is not required. Third, where the benefits of an action would not justify its risks of rights violations, the agent will nevertheless be at liberty to perform the action if he/she gets the consent of the people whose rights are at risk of being violated. Fourth, taking account of risky actions adds another epicycle to the rights principle: our liberty is also limited to the extent that we must not expose others, without their consent, to unjustified risks of having their rights violated (these are different to threats).

AN OBJECTION

It might be objected that the rights principle really only gives a framework for a principle for drawing the bounds of individual liberty rather than the principle itself. For, it may be said, in accommodating all the counter-examples to the other four principles, I have appealed to our intuitive notions of what things we have rights and liberties to do, rather than clarifying and explaining those
intuitions by appeal to a principle. I have been talking of my right to use my property in ways which do not violate the rights of others, but I have given no clear rule for deciding when an action actually violates the rights of others. For example, it is intuitively plain that if I blow up John’s factory, thereby wiping millions of pounds off the value of his business, then I have violated his rights; but if I invent some new gadget which makes John’s industry obsolete, thereby wiping millions of pounds off the value of John’s business, then I have not violated his rights. But why is the one action a violation of John’s property rights and the other action not? It is no use referring to the physical force used in the former case, for I have already shown that that will not provide a general explanation. But I have not provided a principle for distinguishing the two types of action.

So let it be agreed that I have shown the other four principles to be wrong and that the limits to individual freedom need to be drawn by reference to property rights. Still, I have not given any principle for identifying when an action violates a property right and when it does not. All I have done is appeal to intuitions of where the boundaries of our property rights lie.

I think this objection is probably right. It does not undermine anything I have said. But it does show where further work needs to be done.

CONCLUSION

I have considered and rejected four principles for drawing the bounds to individual liberty that are commonly put forward by libertarians. These are the harm, cost, Pareto and coercion principles. None of them gives the right answer when applied even to quite commonplace instances of action.

I have expounded and defended a different principle which is also commonly put forward by libertarians. This is the rights principle:

People should be free to do whatever they want so long as they do not violate the rights of others, threaten to violate the rights of others or expose others, without their consent, to unjustified risks of having their rights violated.

The rights referred to are property rights. In explaining and defending the rights principle I have relied upon our intuitive understanding of what property rights permit and exclude. What I have not offered is any general principle for deciding whether an action is or is not a violation of a property right.5

NOTES

1. The Pareto principle is derived from neo-classical economic analysis. The modified Pareto principle would not strictly be a Pareto principle since it would be consistent with diminution of utility. Libertarians generally pour scorn on neo-classical economics and its fictional notions of perfect competition, general equilibrium, perfect knowledge, utility-maximising rational agents, costless transactions, etc., so it is surprising to find them sometimes leaning on the Pareto principle, or its modified version, in their arguments.

2. Things may be more complicated than this nowadays because environmental health departments have been given statutory powers to curb noise pollution; but I ignore such complications here.

3. The classic discussion of these issues is, of course, Ronald H. Coase’s brilliant and funny “The Problem of Social Cost”, in The Firm, the Market and the Law, University of Chicago Press, Chicago and London, 1988, pp. 95-156. See also the indispensable supplement “Notes on the Problem of Social Cost”, ibid., pp. 157-185. Professor Coase is at pains to point out that, while the possibility of market transactions provides an incentive to take externalities into account, in some cases the cost of market transactions may be a stronger disincentive. That is, in some cases the cost of discovering what the externalities are, and then negotiating over them, would be more than the injured parties would be prepared to pay to get rid of the externalities.

4. Does threatening to violate my rights itself constitute a violation of my rights? Even if so, the right so violated would be a higher order right (because it refers to other rights), so the principle still needs an epicycle.

5. The principle defining the limits to individual freedom is absolutely fundamental to libertarianism. The principle is a proposition involving multiple generality: everyone should be free to do whatever he/she wants provided it does not violate the rights of anyone else. There are three ‘quantifiers’ (the italicised expressions of generality); and this is so even if one subscribes to one of the other versions of the principle (indeed, the Pareto version has four quantifiers). Until Frege invented quantification theory (toward the later part of the last century) logicians were unable to analyse sentences essentially involving multiple generality and were unable to explain why inferences involving such sentences were valid or invalid. The scholastics tried to develop the Aristotelian logic to explain such inferences, but their ever-more complex theories were never more than partially successful and as a result the study of logic fell into disrepute at the Renaissance. Given that inferences involving multiple generality are at the heart of libertarianism, it is particularly ironic to find a libertarian extolling the virtues of traditional (Aristotelian) logic over modern quantification theory. The faux pas is committed by Nicholas Dykes in his review of David Kelley’s The Art of Reasoning in Free Life, Number 24, December 1995, Libertarian Alliance, London.