

Liberty versus Morality: The Free Society=s Troublesome Solution

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"[M]an acts from judgment, because by his apprehensive power he judges that something should be avoided or sought. But because this judgment, in the case of some particular act, is not from a natural instinct, but from some act of comparison in the reason, therefore he acts from free judgment and retains the power of being inclined to various things. And forasmuch as man is rational is it necessary that man have a free-will" (*Summa Theologica*, Q. 93).

It is perhaps one of the most difficult aspects of a free society to accept that others= immoral conduct may be interfered with by peaceful means alone, namely, persuasion, propaganda, advocacy, boycott or ostracism. This is both a great strength as well as one of the least popular aspects of the free society and of its political-philosophical statement, libertarianism. It is therefore important to address itCcan champions of liberty rebut the charge that they are promoting evil by making immoral conduct possible?

Let=s consider the basic ingredient of the political theory of libertyCwhat is now dubbed libertarianism. At its heart is the idea that in human communities it is individuals who are sovereignCthe people who rule ought to be the individuals who inhabit the community and they are to rule only themselves unless they give permission to someone elseCas one might by letting a coach, bodyguard or trainer order one about because one has authorized the person to do so. That=s one meaning of Athe consent of the governed.@

There is no class of rulers in a genuine free human community, either designated by God or by history. Every human being has a right to govern his or her own life. In fact, that=s the best way to make clear what this is about, is to remind ourselves of the

crucial lines of the United States Declaration of Independence: "We hold these truths to be self-evident, that all men are created equal and are endowed by their Creator with certain unalienable rights to life, liberty, and the pursuit of happiness" and "that to secure these rights, governments are instituted."

Now, if one appreciates the full meaning of those lines, one will grasp quite clearly the crux of a free society. It is that the only job government can have in a just human community is to protect individual rights. That would involve having courts of law in which disputes about rights violations are adjudicated, a military that would defend the people from outside aggression, and there would be police that would defend people from criminal conduct. There would not be government-sponsored radio or television stations, sports arenas and auditoriums, tennis courts and golf courses. All these would violate the strictures of a libertarian system of justice.

The reason for that is that all such projects, when carried out by governments, involve taking some people's property or labor and forcibly transferring their ownership or fruits to somebody else's. And that is not permitted in a free society to anyone, including even a democratically elected government, because a free society rests on the understanding that every individual has a right to his or her life, to his or her liberty, and to the pursuit of his or her happiness. Whatever goals one's life, actions or property are devoted to must be determined by one's own judgment and not by the judgments of some master, leading elite or group of politicians and bureaucrats—not even by the majority.

It's amazing for some who have come to the United States from abroad where these ideas were looked upon as dreams to be realized sometime in the future and only one country was seen to have come close to realizing them, named the United States to discover what so many people who write about politics in the USA believe. Whether in academic journals, in books published by Harvard, Princeton and Stanford University Press, or on the editorial pages of newspapers, the original and quintessential American idea of

individual rights to life, liberty and property is hardly respected, never mind embraced.

It is even embarrassing that today in the United States there are more prominent thinkers advocating collectivist alternatives like communitarianism, socialism, communism, even certain varieties of (democratic?) fascism, than there are almost anywhere else in the world. When people visit here from the former Soviet Union or Poland or Russia, they're often stunned how many of our professors in political philosophy and political science departments seem to favor a system that they have experienced and now generally find completely inadequate for the needs of a human communities.

Well, be that as it may, it should be made clear that the ideals that were sketched, and only sketched, in the Declaration of Independence are radical. That means these ideas go to the root of the basic issues of community life. That's why it's called the American revolution. It wasn't just that there was a lot of fighting going on at the country's beginning but that a certain idea of how governments ought to be understood had been fundamentally overturned via the official statement of the Founders of the republic.

The American founders rejected the top-down shape of society, one in which kings, monarchs, Caesar's, pharaoh's, czar's, would rule subjects. The founders have come upon the notion that there is something fundamentally amiss in a community in which certain people enjoy what is thought to be a naturally superior status to others and can use others as their resources for their various goals. What happened is that instead of seeing the king, the state or the government as the sovereign while the inhabitants of the community as subjects—as they're still called in Canada, Australia, New Zealand and England because they are subject to the will of the king (even if it's mostly ceremonial now)—the official political philosophy of the country was to be that individuals are sovereign (independent and self-ruling). In the United States of America what had been substituted for the top down idea of government is the recognition that all of us individually have dominion over ourselves: Our lives are

for us to direct, for better and for worse. This is individualism and it meant to unseat feudalism, one variety of collectivism.¹

Now this is very difficult for many people to accept, namely, that a person's life is his or her own, for better or for worse. That is because throughout recorded history most official political outlooks taught something very different. Human beings were supposed to belong to the clan, tribe, country, family, ethnic group, racial or social class, or the nation. Even in our day the idea that the community owns the individual—that it is to the community that one belongs—is widely promulgated (Taylor, 1989).

In a *bona fide* free society individuals have the right to their own lives, their own liberty, and their own pursuit of happiness, which means that you have to accept that your next door neighbor, in fact all the people in your community, have the right to act in ways that may even be quite improper. If they choose to ruin themselves with drug or alcohol abuse, or if they work for causes that are trivial and meaningless, there is nothing anyone is authorized to do to them apart from imploring them to change their ways. They may be spending their lives and resources on goals that are morally abhorrent or silly, yet this is their right to do and no one may prevent it from happening by means other than persuasion.²

¹It isn't being claimed here that all the Founders were libertarians. What is true, however, is that they put their political ideas in terms that eventually gave rise to a fully developed libertarian political philosophy. This is because they had been influenced by classical liberals such as John Locke. See, for more on this, Tibor R. Machan, ed., *Individual Rights Reconsidered* (Hoover Institution Press, 2001).

²Immoral conduct that infringes on or violates others' rights may, of course, be rebuffed but not because it is immoral but because it invades the moral sphere of another.

The point needs to be stressed: It isn't just that if we do not like or prefer or approve of how they act, they may not be intruded upon but that they have a right to do what is, in fact, morally wrong. There may well be people who are racists, bigots, lazy, or wrong in many other ways in how they guide their own lives and one isn't able to reach them by way of argument or influence them with books about their errors and vices, successfully editorialize against them, or boycott them yet they may not be forced to change. There is no justification for one to go treat them as if they were one's children and make them act as one judges, possibly quite correctly, to be correct. As Abraham Lincoln put the point, "No man is good enough to govern another man, without that other's consent."³

This is the crucial aspect of a free society. Of course, many of us, quite rightly, become very exercised about the misbehavior of our fellow human beings, often to the point where we urge vice-squad action against them by government. Such misbehavior tends to have an adverse impact albeit not via force but osmosis on the lives of those near the perpetrators. So many would naturally like to prevent this.⁴

³The full quote goes as follows: "No man is good enough to govern another man without the other's consent. When a man governs himself, that is self-government; but when he governs himself and also governs another man, then that is more than self-government—that is despotism. Our reliance is in the love of liberty, which God has planted in us; our defense is in the spirit which prizes liberty as the heritage of all men in all lands, everywhere. Those who deny freedom to others deserve it not for themselves, and under a just God cannot long retain it." http://www.carpenters.org/history/century_0798.html

⁴Those who champion the polity of individual liberty do not deny such influences but note that they are not independent of the choices of those who are being influenced, thus they may not be forcibly warded off, only via education, persuasion, and other peaceful means.

If a racist refuses to deal with people of a different race, some of what the racist has to offer to people, from which they could benefit, is not going to be forthcoming to those people. That is lamentable, upsetting, and some people find this intolerable and want to use the government to remedy it. Drug abuse, lack of ambition and prudence, failure to act generously and the like are all targeted for remedy this way by those who find it a serious problem that people aren't always doing the right thing for themselves and for others.⁵ The result of this is often the enactment of laws and public policies that promise to correct the situation, direct those concerned to behave better, do the right thing.

When government responds to the urgings of vocal constituents to make people behave, it is difficult to raise the issue that this isn't what government is supposed to do. It is easier to see how wrong this is when the behavior being imposed is not decent, not commendable, as when government kept slavery and segregation in force. And when it was finally widely recognized that these institutions are wrong and should be illegal, government was in part instrumental in ending them. The only notable example of halting government from trying to make people behave well is prohibition. So this makes it appear that government is the proper instrument for undoing all bad things or promoting all good things in a human communities. A lot of people see that gambling is bad for many who engage in it, or prostitution and the reading of *Hustler* Magazine. If they had their way they would have the government intrude and make all this better.

⁵This last has motivated many from the political Center and Radical Left, especially, to call for massive wealth redistribution on not just the domestic but international fronts. See, for example, the works of Martha Nussbaum, that the alleged stinginess of the wealthy warrants taking from them substantial portion of their wealth and giving it to those in dire straits.

But, and here is the crux of the issue, that would itself be morally wrong and moreCit would also be invasive and thus may be resisted.⁶ Human adults are not to be treated in such a manner by their government, an agency that ought not to conduct itself in ways it had been thought proper once (and is still thought proper in many regions of the globe), namely, paternalistically.

It is wrong to empower some people to try to make other people good. Coercion is not how adults ought to deal with one another. It is precisely the hallmark of civilization that one must *convince* people to change their ways. One of the clearest signs of a free society is that it adheres to an ideal of civilized intercourse. This means that the methods appropriate to human beings rather than to beasts rule community life. One does not remedy others= conduct with violence and force. One has to approach them by reasoning, arguing with them and by trying to persuade them. And if that doesn=t work, one has to live with it. The most one can do is ostracize such people, leave them be on their own and suffer the consequences of their ways. And only if their misconduct is intrusive, in violation of one=s rights, may one use defensive force to fend them off.⁷

Trying to make others good by means of prohibiting their choices from taking effectCthat is, via prohibition, or by forcing them to do the right thing, that is regimentation, is also a futile effort. That=s because ethical, morally good, human conduct has to be the outcome of the choice or initiative of the agent who is to perform it.⁸

⁶This point, stressed about governments that are tyrannical, is made clear in the Declaration of Independence and powerfully lends that document its libertarian flavor.

⁷This, incidentally, is one crucial reason so many among the political leaders of many authoritarian, including theocratic foreign countries (and the supporters among the clergy and intellectuals) find America detestable. Its system refuses to take over the management of citizens who mismanage their own lives.

⁸For a fuller story on this point, see Tibor R. Machan, *Initiative B Human Agency and Society* (Stanford, CA: Hoover Institution Press, 2000).

If I don't choose to be decent but am made to behave that way by others, this will not make me decent. Morally upright conduct has to be voluntary. No amount of coercion will achieve my generosity, compassion, charity, honesty, prudence or temperance. Force, indeed, may only be used defensively and most of us realize this when we consider that self-defense justifies its use even while nothing else does.

There is some evidence of the recognition of this libertarian approach to community life present in the American legal system. For example, the Federal Constitution in what turns out to be unjustly discriminatory fashion largely protects the individual liberty of journalists, book publishers, writers, ministers of churches and the like.⁹ They do not in most cases have to conform to standards of right conduct or even the majority's will. They are most often legally protected from government making any decision as to how they should behave. There is no Department of Journalism at the Federal, State, County, or Municipal level. Journalists don't have to go through licensing or board certification with any branch of level of government in order to be eligible for work in their profession.

That is because it was understood by the founders very clearly and so clearly that they wanted to write it down and enact it into major law that human beings may not be made to think differently from the way they choose to think. As much as their thinking may well be wrong as much the fact that some people decide to join the Communists Party, the Aryan Nation or some satanic cult their actions are not properly subject to being commandeered. Neither their thinking, nor their actions for example their devotion of all of their resources to such organizations and their objectives may be subject to regimentation. Baptists might be upset that some people worship god differently from how they worship and that they devote their resources and time to this kind of worship. Yet, in a free society

⁹*Unjustly discriminatory* because members of other professions are coerced for various precautionary, preventive purposes, while journalists and ministers are exempt from this treatment. This certainly violates the spirit if not the letter of the 14th Amendment to the U.S. Constitution.

no one gets to commandeer their thinking and their behavior, at least not with respect to how they should worship or what sort of ideas they should propagate in their newspapers and their books.

Now, this is strange. Is it not important for journalists and authors and ministers of churches to be free, including to be free to write and preach bad ideas? It surely looks like it, considering that yellow journalism, for example, is not banned in this country. It exists all around.

But if it is OK for journalists and ministers and the faithful to be free to think and act as they see fit, it is curious that it is not OK for some people to do what they want to do—for example, to gamble, get involved in prostitution or bad advertising. Why are those people, the professionals in journalism and in religion, protected from other people's commandeering their behavior, while others are not protected? That is wrong.

The libertarian sees it differently. Basically, let us generalize the principles that are embedded in the First Amendment to the Constitution to everything—for example, education, medicine, automobile works and the rest. There should be a complete separation of state and all the professions. Government ought not to be permitted to regiment any of them.

Take the hard case of education, hard because so many people are used to sending their kids to publicly funded, compulsory schools and have gotten comfortable about it all. First, it is wrong to confiscate funds from some people in order to educate the children of other people. Second, it is wrong to commandeer young people to accept one particular type of education that is handed down by a particular government bureaucracy. There should be as much variety in education as there is in magazines or newspapers. There should be as much diversity there. Children are individuals, too. They should not be herded into classrooms and treated as if they all had the very same needs, the same aptitudes, the same talent. There should be attention to the diversity of children just as there is attention to the diversity of our nutritional needs. There are many, many different types of restaurants, the government is not in a restaurant business.

There are many, many different types of department stores, the government is not in a department store business and for good reason, because there are very, very different needs.

Human beings share a few things amongst each other; they are all rational animals. They have certain biological similarities and they are all capable of thinking. But, how they will put this thinking to use in their lives will differ a great deal. That depends upon their circumstances, their background, their talent, their physique, all kinds of things. Just look around. All your neighbors are human beings and yet every one is different from the other. They all have certain idiosyncratic ways of being. And these are what a free society respects.

Not that there is no bad behavior that needs to be remedied, corrected, or improved, of course, there is. There is not only innocently different behavior but also outright bad behavior, even apart from the behavior that should be illegal, namely, when some invade the lives of others. That is the only bad behavior that should be prohibited by government, punished if it occurs, the sort that forcibly intrudes on the lives of others. If you write an editorial criticizing another person, that other person can ignore that editorial and walk away. So can one ignore another=s gambling, drug abuse and prostitution. But, if one intrudes on another=s home, breaks in, burglarizes it, or perpetrates an assault, kidnaping, rape or murder, that=s something that should be resisted. The reason that governments are instituted amongst human beings, clearly understood by the American foundersCsomething that libertarians extend into many other areas of human lifeCis that we need a specialized agency, trained to deploy due process, so as to deal with violent intruders into our lives.

The reason that we need a specialized agencyCthat even in the process of dealing with violent intruders (that is, with a criminal suspect)Cis that those suspects are human beings and interacting with them requires certain rules that respect their humanity. That=s the point of due process in the criminal law. You can=t simply just shoot someone=s head off because he steals a couple of pennies from you.

You cannot intrude on a person in response to his intrusion without observing the fact that this is a human being and this human being has rights. Just as this is a model in the criminal law, so it should be in all human interaction. You cannot deal with people violently even if you thoroughly disagree with their way of life. Even if you consider their way of life abhorrent.

Oddly, what is generally understood to apply to criminal suspects is not applied to members of professions outside those covered by the First Amendment. Other professionals may be burdened with all kinds of regulations, fees and the like even though no proof exists that they have done anything wrong to anyone. The mere possibility of their doing something wrong suffices to impose upon them such undeserved burdens.

The United States may loosely be called a democracy, but in fact it was meant to be a constitutional democracy. A constitutional democracy basically means something very similar to a constitutional monarchy. Both restrict the powers of government. According to the Declaration of Independence's principles, democracy may not be used to transfer wealth from one party to another party. It may not be used to decide for all of us what kind of life we are supposed to lead. Some of this is also captured in the U. S. Constitution, as well as many state constitutions.

And why is this so? Why is that of some significance? Why is this supposed to be right rather than simply a tradition that happened to grow up in America?

Well, that's a serious and complex philosophical issue. Certainly, there is an assumption underlying this kind of government pertaining to human nature. It is the view that one owns one's life and that another may not rule this life. It assumes that everyone has his or her own task in guiding one's life and that we are all free agents and how we perform that task is going to be what determines our fundamental moral character, the quality of our lives, something that we ought to determine and where intrusion is impermissible unless we say otherwise. The individual person is supposed to be the one who determines whether he or she lives a good or bad life,

whether one is rewarded for this in this world or in another. This is not something others may take over, as if we were children whose parents may treat us as dependents and minors.

It is this idea of us being fundamentally free agents, choosing beings, that necessitates these principles of individualism. Individual rights make sense because we need a sphere of jurisdiction, of personal authority, where our decisions count and significantly influence outcomes. So that when we are judged—either by ourselves, by our friends, or by history—we can be judged accurately.

If, however, we are all herded together like conscripts, then what we do is really not our doing. It is the doing of the masters above us, or of the government or of the majority. If you are made to pay for some policy the government has, either democratically or quasi-democratically—which is more likely the case—decided it should be carried out and you are made to fund it, when foreigners say, “Look what your country is doing. It is supporting this particular regime with foreign aid, with military aid, with all sorts of stuff but depriving others of the same and is thus making very controversial, often wrong, decisions,” can you really accept responsibility for that? If the resources have been coercively taken from citizens, this cannot be their doing. Citizens are all then just members of a conscripted crowd.

There was a time when even some prominent Americans realized all of this. One day many moons ago, in the U. S. House of Representatives, a bill was taken up appropriating money for the benefit of a widow of a distinguished naval officer. Several beautiful speeches had been made in its support. The Speaker was just about to put the question when Crockett arose:

Mr. Speaker I have as much respect for the memory of the deceased, and as much sympathy for the sufferings of the living, if suffering there be, as any man in this House, but we must not permit our respect for the dead or our sympathy for a part of the living to lead us into an act of injustice to the balance of the living. I will not go into an argument to prove that Congress has no power to appropriate this money as an act of charity. Every member upon this floor knows it. We have the right, as individuals, to give away as much of our own money as we please in charity; but as members of Congress we have no right so to appropriate a dollar of the public money. Some eloquent appeals have been made to us upon the ground that it is a debt due the deceased. Mr. Speaker, the deceased lived long after the close of the war; he was in office to the day of his death, and I have never heard that the government was in arrears to him.

Every man in this House knows it is not a debt. We cannot, without the grossest corruption, appropriate this money as the payment of a debt. We have not the semblance of authority to appropriate it as a charity. Mr. Speaker, I have said we have the right to give as much money of our own as we please. I am the poorest man on this floor. I cannot vote for this bill, but I will give one week's pay to the object, and if every member of Congress will do the same, it will amount to more than the bill asks.

Some would argue that such charitable deeds can be performed democratically, but that is a mistake. To start with, there's always the problem that in regimented committees and large groups unless you join these groups freely and you have what economists refer to as the exit option, that is the option to leave the group and not be part of it you cannot be held responsible for what the group does unless you have freely consented to the method by

which decisions are reached. Otherwise you're just a conscript in this group. That's one of the central dangers of extending democracy too far in community affairs.

When democracy works, for example in the Kiwanis Club or in a Rotary Club and so on, that's because people sign up for the democratic process as they join or enter the door. They know this is the case, so when democracy is practiced, there can be no basic complaint. But when one is born into a community, it is not the case that one may be forced to submit to the democratic process. It is no excuse saying, "Well, you were born here, so you have to adhere to the democratic process." What if the person wouldn't choose to do that? What if his or her judgment precluded submitting all the issues to a democratic method? They ought to be free to make that choice. And if we respected their fundamental humanity as free agents, who have responsibilities to carry out in their lives, then we would recognize this right to freedom and we would enshrine it into law and protect it just as the Declaration declared that it should be protected.

There is one principle that libertarians take very seriously, indeed. It is not uncontroversial but they have reached a state of mind in line with which this is a principle that is certain beyond any reasonable doubt. The libertarian maintains that individual human beings are sovereign. They are not subject, by any justification, to the rule of other individuals unless they have given their consent. This is the meaning of the concept of the consent of the governed.

Human beings are free-judging agents. They need to have this recognized in law and the libertarian basically advocates a political society in which this is done through and through. What they also recognize is that it is an ethical imperative to establish a system of laws and their proper enforcement that aims to secure their basic and derivative rights—that is exactly what was put on record by the American founders, as noted above, when they noted that it is "to secure these rights [that] governments are instituted among men, deriving their just powers from the consent of the governed." It is a matter of the virtue of prudence to establish law enforcement, as John Locke recognized, given that law enforcement itself is a special

profession, and that it is a value shared among all. And proper law-enforcement, concerned as it must be with securing our rights, is not objectionable to even those who would wish to embark on self-defense all on their own, since such law enforcement involves no coercion, merely protective measures, something to which no one is justified to object so long as the exit option is not foreclosed.

Some may argue that the reason for establishing law-enforcement or government has to do mainly with what economists refer to as the problem of public goods. No. Even if there is a public goods problem, it does not justify one's imposing costs on others, anymore than if my failing to support a valuable community service, such as classical music radio programming, which is a public good since I cannot be excluded from enjoying one that is being broadcast, justifies the confiscation of resources from me to support it. Furthermore the public goods argument rests on questionable assumptions about human motivations, namely, that the highest motive we have is to reduce the costs of whatever it is we wish to obtain. An alternative motive should probably be considered to offset the impact of public good analysis, namely, the high valuation of certain goods and services, regardless of whether one might obtain them at lower costs. (I will jump in to try to save my child from drowning even if I suspect someone else might also do so, someone who is a better swimmer and isn't dressed in expensive garb.)¹⁰ As Tucks observes,

It has been customary for political theorists to accept that [the free rider-public goods] argument is a good one, and to direct their energies toward devising strategies to cope with it. The most popular has undoubtedly been some mechanism of social coercion, despite the fact that such mechanisms characteristically depend on cooperative action by the people

¹⁰For more on the problems with public goods analysis, see Richard Tuck, 'Is there a free-rider problem, and if so, what is it?' in R. Harrison, ed., *Rational Action* (Cambridge, England: Cambridge University Press, 1977), pp. 152-56.

concerned, and that the argument is therefore likely to turn into a *regressus ad infinitum*.¹¹

¹¹Tuck, *op. cit.*, AFree-rider Problem, @ pp. 147-48.

Now, let me say something about the future of this libertarian outlook. Nobody pretends that overnight there will be a libertarian society. No champion of individual rights can be that hopeful. Most of us realize that a great many people are so wedded to government hand outs and powers promising to solve problems that they think need urgent solutions and they're so well accustomed to governments making such promises to them, that they are almost unable to see any other alternative. When it comes to the environment, it has to be the government that does it. When it comes to AIDS research, it has to be the government. They don't even imagine any longer, even for the sake of argument, just as an exploration, what it would be like to leave matters like that to the voluntary choices of members of the society rather than to the forceful imposition of governments.

Most of us who champion liberty recognize all this. However, we are also aware that if we do not continue with our efforts if we do not make our voices heard in the community, if we do not capitalize on the few people who are willing to entertain the possibility and maybe even the likelihood of the emergence of a genuine free society then this beacon of liberty in human history called the United States of America is going to degenerate into a demagogic, despotic society. So, at least, we may be holding back something that would bring back the ways of Caesar, of the czars, or of George III. That alone is worth the effort, as far as I can grasp these matters.

References

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