

On Liberty

Ellis Sandoz's *A Government of Laws* makes clear that the love of liberty was the central theme of the American founding. Yet then, as now, there were people who misunderstood or abused the concept and took it too far. The outbreak of turbulence and confusion after the Revolution represented a “contagion of liberty’ run amok” (p. 167). But exactly what sort of behavior is meant by this use of the phrase “contagion of liberty”? Is such behavior an abuse of the right to liberty? To answer these questions I will first explore what the right to liberty means.

As the love of liberty was the central theme of the American founding, so too was it the central theme of the American Revolution. At the heart of American grievances against Britain was being taxed without consent. The American colonists were not represented in the British Parliament and so had no say in whether and to what extent they could be taxed. To secure themselves from tyranny, the colonists fought for independence from Britain for the freedom to govern themselves. Another issue of fundamental importance to the former colonists was freedom of religion. They had fled to America in order to escape from religious persecution so that they could practice their religious and moral beliefs as their consciences bade them.

The love of liberty is not merely some arbitrary social convention. It is a natural right of man. The Declaration of Independence states that “all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness.” All human beings are born with these rights,

and other rights derived from them, and possess them whether living in a state of nature or under a tyrannical government. This is the meaning of unalienable rights. Man possesses these rights by virtue of his nature as a volitional being with the faculty of reason. In order to live a life proper to man, he must be free to pursue the actions that reason dictates. Life is “meant to be lived, fostered, and enjoyed (p. 214).”

While man’s natural rights are unalienable, they can be violated. Man’s rights are violated by coercion, by the initiation of the use of force against him. It is for the purpose of securing these rights that men come together in voluntary association to form a government. Here it is important to point out that the rights enumerated in the Declaration of Independence and the Bill of Rights were understood by the founding fathers as inseparable from property rights. In his First Inaugural Address (March 4, 1801), Thomas Jefferson said, “a wise and frugal government, which shall restrain men from injuring one another, which shall leave them otherwise free to regulate their own pursuits of industry and improvement, and shall not take from the mouth of labor the bread it has earned. This is the sum of good government, and this is necessary to close the circle of our felicities...” The right to liberty, then, cannot be exercised without a secure right to property. Man must be able to keep the fruits of his own labor and dispose of it as he sees fit, provided he does not violate anyone else’s rights in doing so.

We can now turn to the issue of what sort of behavior is meant by the phrase ‘contagion of liberty run amok’. Some examples are given in a quotation on page 168. The first is that of a vagabond who defended himself by arguing that America is a ‘free country’. Now, if what is meant by vagabond is that he makes a living by fraud or theft as he wanders aimlessly about the country, then of course the man is a criminal. But if he is

a man who simply prefers to travel constantly, supports himself through honest (albeit temporary) jobs or is independently wealthy, and pays for his voluntarily provided room and board, then he has a right to do so. Another example is someone who claimed the right to visit all whorehouses. Whatever one may think of the fate of this man's soul, if he is willing to pay for such services, and the proprietor, who has a right to own and run such an establishment, is willing to provide such services to him, then he has a right to purchase them.

It might be argued that licentious and otherwise immoral behavior, such as excessive gambling, smoking, drinking, drug-use, etc., are somehow harmful to society or the common good. Insofar as such activities are undertaken voluntarily, however, it is difficult to see how anyone is harmed but the individual who took part in such behavior. In so far as such behavior is prevalent in society, it is because the demand for it is high. Demand creates supply, not the other way around.

Leaving aside the issue of rights, it might also be argued that laws governing our personal and social conduct are necessary in order to instill morality. Even if the salvation of men's souls were the job of government, such a task cannot be accomplished with positive law. If one believes that God granted us free will, we must freely choose our religion and our moral code and act accordingly. Being prohibited from acting immorally does not make one moral. Moreover, if history has taught us anything, it is that such prohibitions do not even prevent the behavior they are intended to prevent. Two cases in point are the ill-fated prohibition on alcohol and the current war on drugs. The former was and the latter is an utter failure. If people are to become more moral, it must be done through persuasion, not coercion.

If one's aim is merely to protect the individual from himself, one is left with the problem of determining what is harmful to him. The various religions and different Protestant denominations will differ on this point. If we are going to prohibit alcohol, marijuana, or cocaine, why not nicotine, morphine, and aspirin as well? Why not prevent invasive medical procedures, dangerous sports, or unhealthy food like candy? Shouldn't we also ban publications that cater to man's lowest instincts, such as pornography or the tabloids? We might as well ban social, political, and religious doctrines that we deem injurious to man while we are at it. Who is right? And is the government to favor one religion or denomination's position over others?

In the introduction I mentioned people who misunderstand the concept of liberty and take it too far. I was not referring to those individuals who, however immoral or unhealthy their behavior, are nevertheless still acting within their right to liberty, albeit irresponsibly. I was instead referring to those types of individuals who violate the rights of others while claiming that it is their right to do so. For example, there are those who think that they have the right to a job at a certain wage, regardless of whether they qualify for it or whether anyone wants to provide it for them. There are those who think that the poor are not free simply because they are poor, regardless of whether they are prevented by force from improving their situation. And there are those who think they should be "free" to do whatever they wish, regardless of the consequences.

A distinction is made in *A Government of Laws* between sacred and vulgar liberty. Vulgar liberty involves "choosing and rejecting physical satisfactions and means to them (p. 169)." It is argued therein that vulgar liberty is a perennial threat to sacred liberty. It should be clear by now that the liberties that the types of individuals discussed in the

above paragraph think they are entitled to are not in fact liberties. Further, vulgar liberty is not inherently immoral or unhealthy. The problem when it becomes so is not a lack of the proper laws governing personal and social behavior, and the solution is not the proliferation of such laws. The problem and solution lie in the moral education of society. This position seems to me to be in keeping with the spirit of the American founding.