

Aspects of Liberty: Cornerstone, Manipulation, and Inequality

By Roland F. Moy



Roland F. Moy

Roland F. Moy earned the Ph.D. in political science from The Ohio State University. After teaching for 30 years, primarily in the field of international studies, he retired from Appalachian State University in 1998. In addition to participation, presentations, and office holding in professional organizations, he was active in organizing Model United Nations events each year for both high school and college students.

As a life long singer, he continues a century-long family tradition and over a 36-year period has been active with the local Arts Council, organizing and producing musical shows to raise funds for music scholarships and producing annual singing events to support Christmas charity funding.

Since joining the Torch Club in Boone, NC in 2007, Moy has developed several papers that apply a core political science concern about abuse of power to the related field of economics, one of which follows.

“Aspects of Liberty” was presented to the High Country Torch Club on May 15, 2015.

As the new presidential term unfolds, there will be many debates and discussions about the proper role of government. Underpinning these debates and policy proposals will be competing understandings about the historical and constitutional meanings of liberty. The following analysis will attempt to illuminate the major issues involved as the interpretational struggle continues from the election season into the new term.

By implication,
and as our
constitutional law
history has developed,
the First Amendment
liberties are not
absolute and can be
regulated out of
concern for libel,
obscenity, and public
safety or morality.

A starting point is provided by political philosopher David Spitz:

If liberty is the absence of restraint, then all law is an invasion of liberty and men are free only in the absence of, or to the extent that they successfully disobey the law. But restraints are also imposed by men and organizations other than the political government, as when a bully prevents a man from crossing the street, in which case

restraint of the bully becomes a necessary condition of that man’s liberty. Thus law enters as a restraint on a restraint; it is a restriction of some kinds of liberty in order to realize other kinds of liberty [...]. To look on law as a deprivation of liberty is to look upon liberty as an absolute concept. It is more sensible to conceive of law as a necessary restriction of some liberties in order to guarantee others. The problem then becomes one of a choice of liberties, *and of restraints*. (Spitz 112; emphasis in original)

Liberty As Cornerstone

The constitution of the United States and its amendments are rightly given much respect as a framework for protecting the liberties that Americans enjoy from government overreach while also enabling representative government to function. But they also provide guidelines for imposing restraints.

While First Amendment language prohibits laws regulating speech, press, religion, and peaceable assembly, the Fifth and Fourteenth Amendments state that no one should be deprived of life, liberty or property without due process of law. By implication, and as our constitutional law history has developed, the First Amendment liberties are not absolute and can be regulated out of concern for libel, obscenity, and public safety or morality. Debate continues over the proper restraints on firearm safety and ownership, and about the degree of privacy and protection from unreasonable search and seizure that is proper to

expect in the digital age. These may all be classified as liberties that are to be enjoyed with minimal government interference, while understanding that the type and degree of regulation are debatable. The states are also required by the Fourteenth Amendment to protect the “privileges and immunities of citizens” and to provide for equal protection of the law, and by the Fifteenth to protect the right to vote. All these rights are the subject of ongoing litigation about the limits and needs of government action.

The government holds certain positive freedoms that may be enabled within specific policy areas, as authorized by the constitution in Article I, Section 8, when defining the powers of Congress. These include power to lay and collect taxes; to pay debts and provide for the common defense and general welfare of the United States; to borrow money; to regulate commerce; to coin money and to regulate the value thereof; to promote the progress of science and useful arts; to make all laws which shall be necessary and proper for carrying into execution the foregoing powers.

Efforts to define this last power and the Tenth Amendment, which reserves to the states or to the people those powers not delegated to the federal government, underlie much of the current debate and litigation about the proper constitutional role of government at both the federal and state levels.

Manipulation Of Liberty

A side effect of the protection offered by the American constitution to discussion and debate about policies and the proper role of government is the creation of an open arena for using language and symbolic manipulation as weapons to help shape that debate about liberty.

Language forms and terms reinforce the reassuring perspectives

established through other political symbols, subtly interweaving with action to help shape values, norms, and assumptions about future possibilities. Abstractions like democracy and justice are reified and identified with existing political institutions. [...] Trite phrases may be used as incantations, serving to dull the critical faculties. (Edelman 190)

The government holds certain positive freedoms that may be enabled within specific policy areas, as authorized by the constitution in Article I, Section 8, when defining the powers of Congress.

One such effort to claim definitional control of “liberty” as a symbol for the benefit of those resisting taxes and the regulation of economic activity was the development of the Sharon Statement (the founding document for Young American for Freedom) in the fall of 1960 (“Sharon Statement”). It has shaped conservative talking points from Barry Goldwater until today. Defining liberty as an absolute concept, it casts government regulation of economic liberty and tax revenue spent beyond security needs as a moral challenge to the truths (facts) about God’s will, and in violation of a sanctified American Constitution.

David Spitz has analyzed the Statement’s politico-theological synthesis:

[...] it is the obligation of government “to protect these freedoms.” How? Apparently by recognizing these simple further “facts”: first, that by the mystery of incarnation the principles of right political order have become historical flesh more perfectly in the American Constitution than in any other form, or time and place; second, that states’ rights is the essential key to the genius of this right political order; and third, and most crucially, that the market economy is the economic embodiment of this political incarnation. [...] But having thus united God, the Founding Fathers (“properly” interpreted), and Adam Smith in a new trinity, it is no difficult task for these young conservatives to conclude, with Goldwater, “that when government interferes with the work of the market economy, it tends to reduce the moral and physical strength of the nation; that when it takes from one man to bestow on another, it diminishes the incentive of the first, the integrity of the second, and the moral autonomy of both.” (Spitz 135)

The Statement appears to conflate language from the Declaration Of Independence with that of the Constitution while having the market economy doing God’s work of perfectly dispensing just rewards. By defining away the need for governmental economic regulation, it suggests market transactions once occurred in a sort of Garden Of Eden—before the “fall of man” led to the moral hazards and the perverse incentives to exploit ignorance and necessity for profit that are so evident in marketplace transactions throughout all of history, including the years of market capitalism since the 1800s.

In rejecting taxes that might be used to assist in the constitutional objective of providing for the “general welfare,” the Statement ignores Jesus’ recommendation that one pay tax (render unto Caesar) without questions about its use, and that chapter 13 of Paul’s Epistle of the Romans calls for obedience to the authorities and exhorts Christians to “Give everyone his legitimate due, whether it be rates, or taxes, or reverence, or respect!” (Phillips) Knowing that adequate assistance from individual charity is undercut by the sin of greed, the authors of the Bible also command repeatedly that rulers and the law provide justice for the poor. We may appropriately ask, then, whether conservatives are being too narrowly selective in their references to God’s will, and cite former Supreme Court Justice Oliver Wendell Holmes, who said, “Taxes are the price we pay for a civilized society.”

Knowing that adequate assistance from individual charity is undercut by the sin of greed, the authors of the Bible also command repeatedly that rulers and the law provide justice for the poor.

Another moderated defense of the Sharon Statement positions was produced by the conservative Heritage Foundation in 2007. “The Progressive Movement and the Transformation of American Politics,” from the foundation’s *First Principles* series, asserts that “today’s liberalism and the policies that it has generated arose from a conscious repudiation of the American founding” (West). There is a natural moral order, its authors argue,

and freedom is “a gift of God and nature.” For the United States’ founders, “the liberty to be secured by government is not the freedom from necessity or poverty. It is freedom from the despotic and predatory domination of some human beings over others.” Guidance on where to draw the lines of legal regulation can be gained, first, by paying attention to the “concept of the commercial republic [that] shored up the idea of free markets but without relapsing into a simplistic worship of the marketplace,” second, by remembering that the central place of individual liberty is “now tempered by other principles that prevent it from flying off to the extremes of libertarianism,” and third, by understanding that “the constitutional idea of equality helped us resist the liberal shift from equality of opportunity to equality of results [...]” (West).

This conceptualization of the American constitutional order, which covets individual immunity from government, is close to what has been described as “Tea Party constitutionalism,” which “speaks not for the eighteenth-century Constitution, but for the contemporary moral and political views of those who endorse it” (Sunstein). Its attempt to place contemporary conservatism in a Goldilocks “just right” position between the extremes of libertarianism and liberalism would still require, in practice, a balancing of liberty and restraints as outlined in the quotation from David Spitz with which we began, including restraints on “predatory domination of some human beings over others” in the marketplace, especially if traditional “family values” are to be protected.

In recent history, a real world experiment in the conservative policy of minimal economic regulation occurred through the passage in 1999 of the Gramm-Leach-Bliley Act, which repealed the remnants of the

1933 Glass-Steagall Act separating investment banking from commercial banking, and in 2000 of the Commodity Futures Modernization Act, which deregulated investment banks and exempted most derivatives and credit default swaps from regulatory scrutiny. These acts and the lax regulation that followed were major facilitators of the economic crash in 2008 that resulted in an estimated loss of \$11.2 trillion in household wealth on Main Street while continuing the enrichment of the wealthiest 1% through the government bailout package and the continuing availability to them of zero-interest loans. At the same time, two Bush tax cuts during a time of war further exacerbated the economic inequality of disproportionate rewards that had been growing since the failed trickle-down economic policies begun in the Reagan years of the 1980s (Quiggin, chapter 4; Harrison).

Conservatives are slow to see that regulation is not always negative or a zero-sum situation.

These shocks of negative reality appear to have prompted the publication in 2010 of the Mount Vernon Statement (“Mount Vernon”), which attempted to reassert the validity and relevance of faith-based beliefs in the concepts of absolute liberty and constitutional sanctity put forward by The Sharon Statement fifty years earlier. These points of view about liberty, regulation, and taxes still to the present day guide the policy prescriptions of elected conservatives, while reinforcing the dogmatic predispositions of their Tea Party supporters.

Conservatives are slow to see that regulation is not always negative or a

zero-sum situation. Regulations on air or water pollution may limit hundreds or thousands of business activities, but they provide freedom to enjoy clean air and water for millions. Rules of the road may be zero-sum at an intersection where one driver yields right-of-way to another driver, but the overall gain for smooth traffic flow from this and other traffic rules is a positive-sum outcome for all drivers.

Regulations on
air or water
pollution may
limit hundreds
or thousands of
business activities,
but they provide
freedom to
enjoy clean air
and water
for millions.

When humankind descended from the trees, we learned the necessity for ground rules. This reality-based perspective operates best in the framework of a reasoned balance of liberties and restraints, working toward a better Goldilocks position by adjusting to the lessons of experience and changing conditions, while using the cornerstone liberties of democratic procedures and unsanctified constitutional guidelines.

Inequality and Liberty

It may take an appreciation of nuance to understand that the greater the marketplace freedom, the greater the unjustified economic abuse and inequality. Markets tend to serve the most powerful, as with the quadrennial

auction of presidential candidates to politically active billionaires. This relationship may not have been evident in pre-agricultural societies among small groups of people in clans or tribes. But as social and political units expanded, and money economies developed, the free and open marketplace exchanges between willing buyers and sellers (so beloved as symbolic centerpieces of conservative lore) became more subject to skewing by the leverage of asymmetric knowledge, price manipulation by market domination, insider trading, ignoring the externalities of air and water pollution, political corruption to gain an economic advantage, and product adulteration by unknown sellers.

Then we have the toxic, inequality-creating abuses of marketplace freedoms: cutting corners on workplace safety; using illegal labor; engaging in wage theft; misclassifying workers as salaried to avoid overtime pay, or as independent contractors to avoid paying overtime, social security tax, workmen's compensation tax, retirement or health care costs; using non-proficiency factors to discriminate in hiring, lay-offs, and promotions; abandoning or cancelling entirely defined benefit retirement plans and other contractual obligations; using private equity (PE) power in hostile takeovers to transfer wealth to the PE firm at the expense of workers and at the risk of bankrupting the bought-out firm; making "front-running" stock trades before executing a buy orders from clients; colluding in contract bidding; taking advantage of necessity by price gouging; threatening plant closing to fight unions and keep wages low; using "universal default" rules to increase interest rates or charge "junk fees" to credit card holders; colluding with corporate boards to set excessive compensations packages for management; using the productivity gains of the last thirty-six years (up 75%) to reward management and shareholders instead of the workforce (median wage

up only 5.6% since 1979) (Mishel; Harrison).

There are also the inequalities produced by government policies shaped by the leverage of lobbying power: capping the Social Security tax at \$118,500 instead of taxing all income; enabling hostile corporate buyouts by allowing a tax deduction on interest for money borrowed to leverage the purchase and providing friendly bankruptcy rules to void worker contracts; allowing tax avoidance for "inversion" by moving company headquarters offshore; allowing mergers into "too big to fail" corporations that can dominate and manipulate markets while risking the need for another government bailout; permitting a declaration of income as "carried interest" to then be taxed at a rate lower than the personal income tax rate; facilitating creative accounting to reward executives with the help of "no expense" stock options, and "quarterly capitalism" stock buybacks; prioritizing tax cuts over funding for primary and secondary education; keeping marginal income tax rates so low since the 1980s that infrastructure of opportunity initiatives like the GI Bill, the Interstate Highway system, the moon landing space program, and affordable college tuition could no longer be adequately funded, and requiring instead that the economy parasitically free-ride on the tax supported public investments of prior generations.

Justified Liberty

As corporations have grown in size to dominate both national and global markets while also being granted the constitutional rights once reserved for actual persons, there is even more need for governmental oversight of the marketplace and Wall Street by imposing "restraints on restraints" on behalf of Main Street workers and consumers. Marketplace exchanges among leverage-free buyers and sellers may still achieve desired amoral

efficiency in the center of economic models that assume rational decision makers, but on Main Street, ample historical evidence shows that moral judgments need to be made about the amount of manipulated marketplace abuse and about the degree of stagnation in median wealth and income growth that should be permitted within a growing economy—especially in a society that claims to provide the “liberty and justice for all” that protects the dignity and worth of each human being.

Any one
abuse
may be
small from
a national
perspective,
but for those
on poverty’s
edge, the
impact
is large.

The leading figure in the current struggle to achieve justice through shared prosperity and appropriate restraints on marketplace practice is Pope Francis (Chaput; *Evangelii Gaudium*), much to the dismay, ironically, of conservative critics who have worked so hard to identify Christianity with unfettered marketplace capitalism (Kruse)¹—the critics whose mantra of “small government, low taxes, and individual responsibility,” incessantly proclaimed by the talk radio school of economics, aligns precisely with the pocketbook interests of financial backers who flirt with “quid pro quo” illegality. This mantra is also an example of the

symbolic manipulation noted above, which Edelman characterized as “trite phrases[...] used as incantations, serving to dull the critical faculties.” Conservatives using this dogmatic approach can preach a false and cost-free narrative about the perfection of markets that blames the poor for being poor. They feel no need to examine proposed policies or taxing adjustments on their merits in the light of changing circumstances or evidence, as liberals are comfortable doing. Instead, they can justify, prior to any examination, the rejection of any new government program or tax increase, even at the risk of government shutdown (Hibbing).

This background helps in understanding some of the issues surrounding conflicting constitutional interpretations of liberty and the resulting policy approaches for dealing with marketplace abuse and the social costs of inequality. Any one abuse may be small from a national perspective, but for those on poverty’s edge, the impact is large. The various proposals for dealing with, or ignoring, these challenges will provide fuel for debate as the presidential term progresses, as well as data for future analyses that pit “classic facts” against “alternative facts” about the impact on real American lives of libertarian views gaining more definitional control of the liberty cornerstone.

Note

1. There was a corporate response, beginning in 1935, to the “paganism” of the New Deal, a twenty year push to place “under God” in the pledge, to establish a National Day of Prayer, and to print “In God We Trust” on postage and currency. This strategy pushing Christian libertarianism was championed by Billy Graham and, as noted above, found its way into The Sharon Statement of 1960 and The Mount Vernon Statement of 2010, producing the 20th century incarnation of a new political economy “trinity” of the cross, the flag, and the marketplace (as noted in the Spitz analysis above). Still undetermined is whether the god we “trust” or are “under” is generic in violation of the First Commandment, or is an established specific God in violation of the First Amendment.

Works Cited

- Chaput, Archbishop Charles J. “Pope Francis and Economic Justice,” *National Catholic Register*, July 26, 2014, accessed at www.ncregister.com
- Edelman, Murray. *The Symbolic Uses Of Politics*. Urbana: U of Ill. Press, 1964
Evangelii Gaudium, November, 2014, accessed at www.vatican.va
- Harrison, J. Michael. “The Economics of Inequality.” *The Torch* 88:1 (Fall, 2014), 6-11.
- Hibbing, John R. et al. *Predisposed: Liberals, Conservatives, And The Biology Of Political Differences*. NY: Routledge, 2014.
- Kruse, Kevin M. “How Business Made Us Christian: A Christian Nation? Since When?” *The New York Times*, March 14, 2015.
- . *One Nation Under God: How Corporate America Invented Christian America*. NY: Basic Books, 2015.
- Mishel, Lawrence. “Even Better Than A Tax Cut,” *The New York Times*, February 23, 2015.
- “The Mount Vernon Statement.” 2010. Accessed at www.themountvernonstatement.com.
- Phillips, J. B. *The New Testament in Modern English*. London: Geoffrey Bles, 1962.
- Quiggin, John. *Zombie Economics: How Dead Ideas Still Walk Among Us*. Princeton: Princeton UP, 2010; revised paper edition, 2012.
- “The Sharon Statement.” Accessed at www.heritage.org.
- Spitz, David. *The Liberal Idea Of Freedom*. Tucson: The U Of Arizona Press, 1964.
- Sunstein, Cass R. “Tea Party Constitutionalism: The unexamined dogmas of the libertarian right,” *The New Republic*, May 26, 2014.
- West, Thomas G. et al. “The Progressive Movement and the Transformation of American Politics,” *First Principles Series* (No. 12), The Heritage Foundation, July 18, 2007.

*The publication of this article is funded by
The Torch Foundation*